

INSURANCE LAW RELATED AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies the Insurance Code and other provisions related to the regulation of insurance and insurance products.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ addresses fees for captive insurance companies and the cap on the Captive Insurance Restricted Account;
- ▶ modifies restrictions on foreign title insurers;
- ▶ addresses grace periods for accident and health insurance policies;
- ▶ modifies provisions related to individuals, group, or blanket accident and health insurance coverage;
- ▶ addresses producer lines of authority;
- ▶ addresses a written agreement related to a voluntary surrender of a license;
- ▶ amends provisions related to continuing education;
- ▶ provides for training related to long-term care insurance and annuities;
- ▶ modifies title insurance agency and producer licensing requirements;
- ▶ addresses when a title insurance producer may do an escrow involving a real property transaction;
- ▶ modifies provisions related to disbursements from escrow accounts;
- ▶ addresses when a person may represent that the person acts in behalf of an insurer;
- ▶ modifies provisions related to providing the commissioner address, telephone, and email address information;
- ▶ modifies caps on title insurance agency and title insurer assessments;
- ▶ addresses verification under a nonresident jurisdictional agreement;
- ▶ addresses the establishment of classes of business;
- ▶ modifies rating restrictions;

- 33 ▶ addresses the renewal of a bail bond surety company license;
- 34 ▶ permits the commissioner to assign a department employee to engage in certain
- 35 activities related to the regulation of captive insurance companies;
- 36 ▶ requires a professional employer organization to notify the commissioner of
- 37 material changes;
- 38 ▶ removes the title insurance assessment from the sunset act;
- 39 ▶ converts certain dedicated credits into several restricted accounts and provides that
- 40 related appropriations are nonlapsing; and
- 41 ▶ makes technical and conforming amendments.

42 **Monies Appropriated in this Bill:**

43 None

44 **Other Special Clauses:**

45 This bill has an effective date.

46 This bill provides for retrospective operation of certain provisions.

47 **Utah Code Sections Affected:**

48 AMENDS:

- 49 **31A-1-301**, as last amended by Laws of Utah 2010, Chapter 10
- 50 **31A-2-208**, as last amended by Laws of Utah 2010, Chapter 391
- 51 **31A-2-212**, as last amended by Laws of Utah 2007, Chapter 309
- 52 **31A-3-304**, as last amended by Laws of Utah 2010, Chapters 10, 68 and last amended
- 53 by Coordination Clause, Laws of Utah 2010, Chapter 265
- 54 **31A-14-211**, as last amended by Laws of Utah 2003, Chapter 298
- 55 **31A-22-607**, as last amended by Laws of Utah 2004, Chapter 329
- 56 **31A-22-610.6**, as enacted by Laws of Utah 2008, Chapters 345, 383, and 390
- 57 **31A-22-614.5**, as last amended by Laws of Utah 2010, Chapter 357
- 58 **31A-22-625**, as last amended by Laws of Utah 2010, Chapters 10 and 68
- 59 **31A-22-701 (Effective 01/01/11)**, as last amended by Laws of Utah 2010, Chapter 10
- 60 **31A-22-716**, as last amended by Laws of Utah 2005, Chapter 71
- 61 **31A-22-721**, as last amended by Laws of Utah 2004, Chapter 329
- 62 **31A-22-723**, as last amended by Laws of Utah 2010, Chapter 68
- 63 **31A-23a-102**, as last amended by Laws of Utah 2009, Chapter 349

64 **31A-23a-106**, as last amended by Laws of Utah 2009, Chapter 349
65 **31A-23a-111**, as last amended by Laws of Utah 2009, Chapters 349 and 355
66 **31A-23a-202**, as last amended by Laws of Utah 2009, Chapter 127
67 **31A-23a-203**, as last amended by Laws of Utah 2009, Chapter 349
68 **31A-23a-204**, as last amended by Laws of Utah 2009, Chapter 349
69 **31A-23a-406**, as last amended by Laws of Utah 2007, Chapter 325
70 **31A-23a-408**, as renumbered and amended by Laws of Utah 2003, Chapter 298
71 **31A-23a-412**, as renumbered and amended by Laws of Utah 2003, Chapter 298
72 **31A-23a-415**, as last amended by Laws of Utah 2010, Chapter 10 and last amended by
73 Coordination Clause, Laws of Utah 2010, Chapter 265
74 **31A-25-208**, as last amended by Laws of Utah 2009, Chapter 349
75 **31A-26-206**, as last amended by Laws of Utah 2008, Chapter 382
76 **31A-26-208**, as last amended by Laws of Utah 2008, Chapter 3
77 **31A-26-213**, as last amended by Laws of Utah 2009, Chapter 349
78 **31A-26-306**, as last amended by Laws of Utah 2004, Chapter 173
79 **31A-29-103**, as last amended by Laws of Utah 2008, Chapters 3 and 385
80 **31A-29-106**, as last amended by Laws of Utah 2008, Chapter 382
81 **31A-30-103 (Effective 01/01/11)**, as last amended by Laws of Utah 2010, Chapter 68
82 **31A-30-105**, as last amended by Laws of Utah 2010, Chapter 68
83 **31A-30-106 (Effective 01/01/11)**, as last amended by Laws of Utah 2010, Chapter 68
84 **31A-30-106.1**, as enacted by Laws of Utah 2010, Chapter 68
85 **31A-30-106.5**, as last amended by Laws of Utah 2010, Chapter 68
86 **31A-30-108**, as last amended by Laws of Utah 2008, Chapter 383
87 **31A-30-110**, as last amended by Laws of Utah 2002, Chapter 308
88 **31A-30-112**, as last amended by Laws of Utah 2009, Chapter 12
89 **31A-31-108**, as last amended by Laws of Utah 2010, Chapter 391
90 **31A-31-109**, as last amended by Laws of Utah 2010, Chapter 391
91 **31A-35-202**, as last amended by Laws of Utah 2000, Chapter 259
92 **31A-35-406**, as last amended by Laws of Utah 2010, Chapter 10
93 **31A-35-602**, as last amended by Laws of Utah 2000, Chapter 259

94 **31A-37-103**, as last amended by Laws of Utah 2008, Chapter 302
95 **31A-37-202**, as last amended by Laws of Utah 2009, Chapter 183
96 **31A-37-504**, as last amended by Laws of Utah 2007, Chapter 309
97 **59-9-105**, as last amended by Laws of Utah 2002, Chapter 308
98 **63I-2-231**, as last amended by Laws of Utah 2010, Chapters 68 and 285
99 **63J-1-602.2**, as enacted by Laws of Utah 2010, Chapter 265 and last amended by
100 Coordination Clause, Laws of Utah 2010, Chapter 265
101 **63J-1-602.3**, as enacted by Laws of Utah 2010, Chapter 265

102 ENACTS:

103 **31A-40-308**, Utah Code Annotated 1953

104 **Uncodified Material Affected:**

105 ENACTS UNCODIFIED MATERIAL

106

107 *Be it enacted by the Legislature of the state of Utah:*

108 Section 1. Section **31A-1-301** is amended to read:

109 **31A-1-301. Definitions.**

110 As used in this title, unless otherwise specified:

111 (1) (a) "Accident and health insurance" means insurance to provide protection against
112 economic losses resulting from:

113 (i) a medical condition including:

114 (A) a medical care expense; or

115 (B) the risk of disability;

116 (ii) accident; or

117 (iii) sickness.

118 (b) "Accident and health insurance":

119 (i) includes a contract with disability contingencies including:

120 (A) an income replacement contract;

121 (B) a health care contract;

122 (C) an expense reimbursement contract;

123 (D) a credit accident and health contract;

124 (E) a continuing care contract; and

- 125 (F) a long-term care contract; and
126 (ii) may provide:
127 (A) hospital coverage;
128 (B) surgical coverage;
129 (C) medical coverage;
130 (D) loss of income coverage;
131 (E) prescription drug coverage;
132 (F) dental coverage; or
133 (G) vision coverage.
134 (c) "Accident and health insurance" does not include workers' compensation insurance.
135 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title
136 63G, Chapter 3, Utah Administrative Rulemaking Act.
137 (3) "Administrator" is defined in Subsection [~~(159)~~] (161).
138 (4) "Adult" means an individual who has attained the age of at least 18 years.
139 (5) "Affiliate" means a person who controls, is controlled by, or is under common
140 control with, another person. A corporation is an affiliate of another corporation, regardless of
141 ownership, if substantially the same group of individuals manage the corporations.
142 (6) "Agency" means:
143 (a) a person other than an individual, including a sole proprietorship by which an
144 individual does business under an assumed name; and
145 (b) an insurance organization licensed or required to be licensed under Section
146 31A-23a-301, 31A-25-207, or 31A-26-209.
147 (7) "Alien insurer" means an insurer domiciled outside the United States.
148 (8) "Amendment" means an endorsement to an insurance policy or certificate.
149 (9) "Annuity" means an agreement to make periodical payments for a period certain or
150 over the lifetime of one or more individuals if the making or continuance of all or some of the
151 series of the payments, or the amount of the payment, is dependent upon the continuance of
152 human life.
153 (10) "Application" means a document:
154 (a) (i) completed by an applicant to provide information about the risk to be insured;
155 and

156 (ii) that contains information that is used by the insurer to evaluate risk and decide
157 whether to:

158 (A) insure the risk under:

159 (I) the coverage as originally offered; or

160 (II) a modification of the coverage as originally offered; or

161 (B) decline to insure the risk; or

162 (b) used by the insurer to gather information from the applicant before issuance of an
163 annuity contract.

164 (11) "Articles" or "articles of incorporation" means:

165 (a) the original articles;

166 (b) a special law;

167 (c) a charter;

168 (d) an amendment;

169 (e) restated articles;

170 (f) articles of merger or consolidation;

171 (g) a trust instrument;

172 (h) another constitutive document for a trust or other entity that is not a corporation;

173 and

174 (i) an amendment to an item listed in Subsections (11)(a) through (h).

175 (12) "Bail bond insurance" means a guarantee that a person will attend court when
176 required, up to and including surrender of the person in execution of a sentence imposed under
177 Subsection 77-20-7(1), as a condition to the release of that person from confinement.

178 (13) "Binder" is defined in Section 31A-21-102.

179 (14) "Blanket insurance policy" means a group policy covering a defined class of
180 persons:

181 (a) without individual underwriting or application; and

182 (b) that is determined by definition ~~[with or]~~ without designating each person covered.

183 (15) "Board," "board of trustees," or "board of directors" means the group of persons
184 with responsibility over, or management of, a corporation, however designated.

185 (16) "Bona fide office" means a physical office in this state:

186 (a) that is open to the public;

187 (b) that is staffed during regular business hours on regular business days; and

188 (c) at which the public may appear in person to obtain services.

189 ~~[(16)]~~ (17) "Business entity" means:

190 (a) a corporation;

191 (b) an association;

192 (c) a partnership;

193 (d) a limited liability company;

194 (e) a limited liability partnership; or

195 (f) another legal entity.

196 ~~[(17)]~~ (18) "Business of insurance" is defined in Subsection ~~[(85)]~~ (87).

197 ~~[(18)]~~ (19) "Business plan" means the information required to be supplied to the
198 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required
199 when these subsections apply by reference under:

200 (a) Section 31A-7-201;

201 (b) Section 31A-8-205; or

202 (c) Subsection 31A-9-205(2).

203 ~~[(19)]~~ (20) (a) "Bylaws" means the rules adopted for the regulation or management of a
204 corporation's affairs, however designated.

205 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a
206 corporation.

207 ~~[(20)]~~ (21) "Captive insurance company" means:

208 (a) an insurer:

209 (i) owned by another organization; and

210 (ii) whose exclusive purpose is to insure risks of the parent organization and an
211 affiliated company; or

212 (b) in the case of a group or association, an insurer:

213 (i) owned by the insureds; and

214 (ii) whose exclusive purpose is to insure risks of:

215 (A) a member organization;

216 (B) a group member; or

217 (C) an affiliate of:

218 (I) a member organization; or
219 (II) a group member.

220 ~~[(21)]~~ (22) "Casualty insurance" means liability insurance.

221 ~~[(22)]~~ (23) "Certificate" means evidence of insurance given to:

222 (a) an insured under a group insurance policy; or
223 (b) a third party.

224 ~~[(23)]~~ (24) "Certificate of authority" is included within the term "license."

225 ~~[(24)]~~ (25) "Claim," unless the context otherwise requires, means a request or demand
226 on an insurer for payment of a benefit according to the terms of an insurance policy.

227 ~~[(25)]~~ (26) "Claims-made coverage" means an insurance contract or provision limiting
228 coverage under a policy insuring against legal liability to claims that are first made against the
229 insured while the policy is in force.

230 ~~[(26)]~~ (27) (a) "Commissioner" or "commissioner of insurance" means Utah's
231 insurance commissioner.

232 (b) When appropriate, the terms listed in Subsection ~~[(26)]~~ (27)(a) apply to the
233 equivalent supervisory official of another jurisdiction.

234 ~~[(27)]~~ (28) (a) "Continuing care insurance" means insurance that:

235 (i) provides board and lodging;
236 (ii) provides one or more of the following:
237 (A) a personal service;
238 (B) a nursing service;
239 (C) a medical service; or
240 (D) any other health-related service; and
241 (iii) provides the coverage described in this Subsection ~~[(27)]~~ (28)(a) under an
242 agreement effective:

243 (A) for the life of the insured; or
244 (B) for a period in excess of one year.

245 (b) Insurance is continuing care insurance regardless of whether or not the board and
246 lodging are provided at the same location as a service described in Subsection ~~[(27)]~~ (28)(a)(ii).

247 ~~[(28)]~~ (29) (a) "Control," "controlling," "controlled," or "under common control"
248 means the direct or indirect possession of the power to direct or cause the direction of the

249 management and policies of a person. This control may be:

250 (i) by contract;

251 (ii) by common management;

252 (iii) through the ownership of voting securities; or

253 (iv) by a means other than those described in Subsections [~~(28)~~] (29)(a)(i) through (iii).

254 (b) There is no presumption that an individual holding an official position with another
255 person controls that person solely by reason of the position.

256 (c) A person having a contract or arrangement giving control is considered to have
257 control despite the illegality or invalidity of the contract or arrangement.

258 (d) There is a rebuttable presumption of control in a person who directly or indirectly
259 owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the
260 voting securities of another person.

261 [~~(29)~~] (30) "Controlled insurer" means a licensed insurer that is either directly or
262 indirectly controlled by a producer.

263 [~~(30)~~] (31) "Controlling person" means a person that directly or indirectly has the
264 power to direct or cause to be directed, the management, control, or activities of a reinsurance
265 intermediary.

266 [~~(31)~~] (32) "Controlling producer" means a producer who directly or indirectly controls
267 an insurer.

268 [~~(32)~~] (33) (a) "Corporation" means an insurance corporation, except when referring to:

269 (i) a corporation doing business:

270 (A) as:

271 (I) an insurance producer;

272 (II) a limited line producer;

273 (III) a consultant;

274 (IV) a managing general agent;

275 (V) a reinsurance intermediary;

276 (VI) a third party administrator; or

277 (VII) an adjuster; and

278 (B) under:

279 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and

280 Reinsurance Intermediaries;

281 (II) Chapter 25, Third Party Administrators; or

282 (III) Chapter 26, Insurance Adjusters; or

283 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance

284 Holding Companies.

285 (b) "Stock corporation" means a stock insurance corporation.

286 (c) "Mutual" or "mutual corporation" means a mutual insurance corporation.

287 ~~[(33)]~~ (34) (a) "Creditable coverage" has the same meaning as provided in federal
288 regulations adopted pursuant to the Health Insurance Portability and Accountability Act ~~[of~~
289 ~~1996, Pub. L. 104-191, 110 Stat. 1936]~~.

290 (b) "Creditable coverage" includes coverage that is offered through a public health plan
291 such as:

292 (i) the Primary Care Network Program under a Medicaid primary care network
293 demonstration waiver obtained subject to Section 26-18-3;

294 (ii) the Children's Health Insurance Program under Section 26-40-106; or

295 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.
296 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. 109-415.

297 ~~[(34)]~~ (35) "Credit accident and health insurance" means insurance on a debtor to
298 provide indemnity for payments coming due on a specific loan or other credit transaction while
299 the debtor is disabled.

300 ~~[(35)]~~ (36) (a) "Credit insurance" means insurance offered in connection with an
301 extension of credit that is limited to partially or wholly extinguishing that credit obligation.

302 (b) "Credit insurance" includes:

303 (i) credit accident and health insurance;

304 (ii) credit life insurance;

305 (iii) credit property insurance;

306 (iv) credit unemployment insurance;

307 (v) guaranteed automobile protection insurance;

308 (vi) involuntary unemployment insurance;

309 (vii) mortgage accident and health insurance;

310 (viii) mortgage guaranty insurance; and

- 311 (ix) mortgage life insurance.
- 312 [~~(36)~~] (37) "Credit life insurance" means insurance on the life of a debtor in connection
- 313 with an extension of credit that pays a person if the debtor dies.
- 314 [~~(37)~~] (38) "Credit property insurance" means insurance:
- 315 (a) offered in connection with an extension of credit; and
- 316 (b) that protects the property until the debt is paid.
- 317 [~~(38)~~] (39) "Credit unemployment insurance" means insurance:
- 318 (a) offered in connection with an extension of credit; and
- 319 (b) that provides indemnity if the debtor is unemployed for payments coming due on a:
- 320 (i) specific loan; or
- 321 (ii) credit transaction.
- 322 [~~(39)~~] (40) "Creditor" means a person, including an insured, having a claim, whether:
- 323 (a) matured;
- 324 (b) unmatured;
- 325 (c) liquidated;
- 326 (d) unliquidated;
- 327 (e) secured;
- 328 (f) unsecured;
- 329 (g) absolute;
- 330 (h) fixed; or
- 331 (i) contingent.
- 332 [~~(40)~~] (41) (a) "Customer service representative" means a person that provides an
- 333 insurance service and insurance product information:
- 334 (i) for the customer service representative's:
- 335 (A) producer; or
- 336 (B) consultant employer; and
- 337 (ii) to the customer service representative's employer's:
- 338 (A) customer;
- 339 (B) client; or
- 340 (C) organization.
- 341 (b) A customer service representative may only operate within the scope of authority of

342 the customer service representative's producer or consultant employer.

343 ~~[(41)]~~ (42) "Deadline" means a final date or time:

344 (a) imposed by:

345 (i) statute;

346 (ii) rule; or

347 (iii) order; and

348 (b) by which a required filing or payment must be received by the department.

349 ~~[(42)]~~ (43) "Deemer clause" means a provision under this title under which upon the
350 occurrence of a condition precedent, the commissioner is considered to have taken a specific
351 action. If the statute so provides, a condition precedent may be the commissioner's failure to
352 take a specific action.

353 ~~[(43)]~~ (44) "Degree of relationship" means the number of steps between two persons
354 determined by counting the generations separating one person from a common ancestor and
355 then counting the generations to the other person.

356 ~~[(44)]~~ (45) "Department" means the Insurance Department.

357 ~~[(45)]~~ (46) "Director" means a member of the board of directors of a corporation.

358 ~~[(46)]~~ (47) "Disability" means a physiological or psychological condition that partially
359 or totally limits an individual's ability to:

360 (a) perform the duties of:

361 (i) that individual's occupation; or

362 (ii) any occupation for which the individual is reasonably suited by education, training,
363 or experience; or

364 (b) perform two or more of the following basic activities of daily living:

365 (i) eating;

366 (ii) toileting;

367 (iii) transferring;

368 (iv) bathing; or

369 (v) dressing.

370 ~~[(47)]~~ (48) "Disability income insurance" is defined in Subsection ~~[(76)]~~ (78).

371 ~~[(48)]~~ (49) "Domestic insurer" means an insurer organized under the laws of this state.

372 ~~[(49)]~~ (50) "Domiciliary state" means the state in which an insurer:

- 373 (a) is incorporated;
- 374 (b) is organized; or
- 375 (c) in the case of an alien insurer, enters into the United States.
- 376 [~~(50)~~] (51) (a) "Eligible employee" means:
- 377 (i) an employee who:
- 378 (A) works on a full-time basis; and
- 379 (B) has a normal work week of 30 or more hours; or
- 380 (ii) a person described in Subsection [~~(50)~~] (51)(b).
- 381 (b) "Eligible employee" includes, if the individual is included under a health benefit
- 382 plan of a small employer:
- 383 (i) a sole proprietor;
- 384 (ii) a partner in a partnership; or
- 385 (iii) an independent contractor.
- 386 (c) "Eligible employee" does not include, unless eligible under Subsection [~~(50)~~]
- 387 (51)(b):
- 388 (i) an individual who works on a temporary or substitute basis for a small employer;
- 389 (ii) an employer's spouse; or
- 390 (iii) a dependent of an employer.
- 391 [~~(51)~~] (52) "Employee" means an individual employed by an employer.
- 392 [~~(52)~~] (53) "Employee benefits" means one or more benefits or services provided to:
- 393 (a) an employee; or
- 394 (b) a dependent of an employee.
- 395 [~~(53)~~] (54) (a) "Employee welfare fund" means a fund:
- 396 (i) established or maintained, whether directly or through a trustee, by:
- 397 (A) one or more employers;
- 398 (B) one or more labor organizations; or
- 399 (C) a combination of employers and labor organizations; and
- 400 (ii) that provides employee benefits paid or contracted to be paid, other than income
- 401 from investments of the fund:
- 402 (A) by or on behalf of an employer doing business in this state; or
- 403 (B) for the benefit of a person employed in this state.

(b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax revenues.

~~[(54)]~~ (55) "Endorsement" means a written agreement attached to a policy or certificate to modify the policy or certificate coverage.

~~[(55)]~~ (56) "Enrollment date," with respect to a health benefit plan, means:

(a) the first day of coverage; or

(b) if there is a waiting period, the first day of the waiting period.

~~[(56)]~~ (57) (a) "Escrow" means:

(i) a real estate settlement or real estate closing conducted by a third party pursuant to the requirements of a written agreement between the parties in a real estate transaction; or

(ii) a settlement or closing involving:

(A) a mobile home;

(B) a grazing right;

(C) a water right; or

(D) other personal property authorized by the commissioner.

(b) "Escrow" includes the act of conducting a:

(i) real estate settlement; or

(ii) real estate closing.

~~[(57)]~~ (58) "Escrow agent" means:

(a) an insurance producer with:

(i) a title insurance line of authority; and

(ii) an escrow subline of authority; or

(b) a person defined as an escrow agent in Section 7-22-101.

~~[(58)]~~ (59) (a) "Excludes" is not exhaustive and does not mean that another thing is not also excluded.

(b) The items listed in a list using the term "excludes" are representative examples for use in interpretation of this title.

~~[(59)]~~ (60) "Exclusion" means for the purposes of accident and health insurance that an insurer does not provide insurance coverage, for whatever reason, for one of the following:

(a) a specific physical condition;

(b) a specific medical procedure;

- 435 (c) a specific disease or disorder; or
- 436 (d) a specific prescription drug or class of prescription drugs.
- 437 ~~[(60)]~~ (61) "Expense reimbursement insurance" means insurance:
- 438 (a) written to provide a payment for an expense relating to hospital confinement
- 439 resulting from illness or injury; and
- 440 (b) written:
- 441 (i) as a daily limit for a specific number of days in a hospital; and
- 442 (ii) to have a one or two day waiting period following a hospitalization.
- 443 ~~[(61)]~~ (62) "Fidelity insurance" means insurance guaranteeing the fidelity of a person
- 444 holding a position of public or private trust.
- 445 ~~[(62)]~~ (63) (a) "Filed" means that a filing is:
- 446 (i) submitted to the department as required by and in accordance with applicable
- 447 statute, rule, or filing order;
- 448 (ii) received by the department within the time period provided in applicable statute,
- 449 rule, or filing order; and
- 450 (iii) accompanied by the appropriate fee in accordance with:
- 451 (A) Section 31A-3-103; or
- 452 (B) rule.
- 453 (b) "Filed" does not include a filing that is rejected by the department because it is not
- 454 submitted in accordance with Subsection ~~[(62)]~~ (63)(a).
- 455 ~~[(63)]~~ (64) "Filing," when used as a noun, means an item required to be filed with the
- 456 department including:
- 457 (a) a policy;
- 458 (b) a rate;
- 459 (c) a form;
- 460 (d) a document;
- 461 (e) a plan;
- 462 (f) a manual;
- 463 (g) an application;
- 464 (h) a report;
- 465 (i) a certificate;

- (j) an endorsement;
- (k) an actuarial certification;
- (l) a licensee annual statement;
- (m) a licensee renewal application;
- (n) an advertisement; or
- (o) an outline of coverage.

~~[(64)]~~ (65) "First party insurance" means an insurance policy or contract in which the insurer agrees to pay a claim submitted to it by the insured for the insured's losses.

~~[(65)]~~ (66) "Foreign insurer" means an insurer domiciled outside of this state, including an alien insurer.

~~[(66)]~~ (67) (a) "Form" means one of the following prepared for general use:

- (i) a policy;
- (ii) a certificate;
- (iii) an application;
- (iv) an outline of coverage; or
- (v) an endorsement.

(b) "Form" does not include a document specially prepared for use in an individual case.

~~[(67)]~~ (68) "Franchise insurance" means an individual insurance policy provided through a mass marketing arrangement involving a defined class of persons related in some way other than through the purchase of insurance.

~~[(68)]~~ (69) "General lines of authority" include:

- (a) the general lines of insurance in Subsection ~~[(69)]~~ (70);
- (b) title insurance under one of the following sublines of authority:
 - (i) search, including authority to act as a title marketing representative;
 - (ii) escrow, including authority to act as a title marketing representative; and
 - (iii) title marketing representative only;
- (c) surplus lines;
- (d) workers' compensation; and
- (e) any other line of insurance that the commissioner considers necessary to recognize in the public interest.

497 ~~[(69)]~~ (70) "General lines of insurance" include:

- 498 (a) accident and health;
499 (b) casualty;
500 (c) life;
501 (d) personal lines;
502 (e) property; and
503 (f) variable contracts, including variable life and annuity.

504 ~~[(70)]~~ (71) "Group health plan" means an employee welfare benefit plan to the extent
505 that the plan provides medical care:

- 506 (a) (i) to an employee; or
507 (ii) to a dependent of an employee; and
508 (b) (i) directly;
509 (ii) through insurance reimbursement; or
510 (iii) through another method.

511 ~~[(71)]~~ (72) (a) "Group insurance policy" means a policy covering a group of persons
512 that is issued:

- 513 (i) to a policyholder on behalf of the group; and
514 (ii) for the benefit of a member of the group who is selected under a procedure defined

515 in:

- 516 (A) the policy; or
517 (B) an agreement that is collateral to the policy.

518 (b) A group insurance policy may include a member of the policyholder's family or a
519 dependent.

520 ~~[(72)]~~ (73) "Guaranteed automobile protection insurance" means insurance offered in
521 connection with an extension of credit that pays the difference in amount between the
522 insurance settlement and the balance of the loan if the insured automobile is a total loss.

523 ~~[(73)]~~ (74) (a) Except as provided in Subsection ~~[(73)]~~ (74)(b), "health benefit plan"
524 means a policy or certificate that:

- 525 (i) provides health care insurance;
526 (ii) provides major medical expense insurance; or
527 (iii) is offered as a substitute for hospital or medical expense insurance, such as:

- 528 (A) a hospital confinement indemnity; or
529 (B) a limited benefit plan.
- 530 (b) "Health benefit plan" does not include a policy or certificate that:
531 (i) provides benefits solely for:
532 (A) accident;
533 (B) dental;
534 (C) income replacement;
535 (D) long-term care;
536 (E) a Medicare supplement;
537 (F) a specified disease;
538 (G) vision; or
539 (H) a short-term limited duration; or
540 (ii) is offered and marketed as supplemental health insurance.
- 541 [~~(74)~~] (75) "Health care" means any of the following intended for use in the diagnosis,
542 treatment, mitigation, or prevention of a human ailment or impairment:
543 (a) a professional service;
544 (b) a personal service;
545 (c) a facility;
546 (d) equipment;
547 (e) a device;
548 (f) supplies; or
549 (g) medicine.
- 550 [~~(75)~~] (76) (a) "Health care insurance" or "health insurance" means insurance
551 providing:
552 (i) a health care benefit; or
553 (ii) payment of an incurred health care expense.
- 554 (b) "Health care insurance" or "health insurance" does not include accident and health
555 insurance providing a benefit for:
556 (i) replacement of income;
557 (ii) short-term accident;
558 (iii) fixed indemnity;

- (iv) credit accident and health;
- (v) supplements to liability;
- (vi) workers' compensation;
- (vii) automobile medical payment;
- (viii) no-fault automobile;
- (ix) equivalent self-insurance; or
- (x) a type of accident and health insurance coverage that is a part of or attached to another type of policy.

(77) "Health Insurance Portability and Accountability Act" means the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as amended.

~~(76)~~ (78) "Income replacement insurance" or "disability income insurance" means insurance written to provide payments to replace income lost from accident or sickness.

~~(77)~~ (79) "Indemnity" means the payment of an amount to offset all or part of an insured loss.

~~(78)~~ (80) "Independent adjuster" means an insurance adjuster required to be licensed under Section 31A-26-201 who engages in insurance adjusting as a representative of an insurer.

~~(79)~~ (81) "Independently procured insurance" means insurance procured under Section 31A-15-104.

~~(80)~~ (82) "Individual" means a natural person.

~~(81)~~ (83) "Inland marine insurance" includes insurance covering:

- (a) property in transit on or over land;
- (b) property in transit over water by means other than boat or ship;
- (c) bailee liability;
- (d) fixed transportation property such as bridges, electric transmission systems, radio and television transmission towers and tunnels; and
- (e) personal and commercial property floaters.

~~(82)~~ (84) "Insolvency" means that:

- (a) an insurer is unable to pay its debts or meet its obligations as the debts and obligations mature;
- (b) an insurer's total adjusted capital is less than the insurer's mandatory control level RBC under Subsection 31A-17-601(8)(c); or

- 590 (c) an insurer is determined to be hazardous under this title.
- 591 [~~(83)~~] (85) (a) "Insurance" means:
- 592 (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more
- 593 persons to one or more other persons; or
- 594 (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a
- 595 group of persons that includes the person seeking to distribute that person's risk.
- 596 (b) "Insurance" includes:
- 597 (i) a risk distributing arrangement providing for compensation or replacement for
- 598 damages or loss through the provision of a service or a benefit in kind;
- 599 (ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a
- 600 business and not as merely incidental to a business transaction; and
- 601 (iii) a plan in which the risk does not rest upon the person who makes an arrangement,
- 602 but with a class of persons who have agreed to share the risk.
- 603 [~~(84)~~] (86) "Insurance adjuster" means a person who directs the investigation,
- 604 negotiation, or settlement of a claim under an insurance policy other than life insurance or an
- 605 annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy.
- 606 [~~(85)~~] (87) "Insurance business" or "business of insurance" includes:
- 607 (a) providing health care insurance by an organization that is or is required to be
- 608 licensed under this title;
- 609 (b) providing a benefit to an employee in the event of a contingency not within the
- 610 control of the employee, in which the employee is entitled to the benefit as a right, which
- 611 benefit may be provided either:
- 612 (i) by a single employer or by multiple employer groups; or
- 613 (ii) through one or more trusts, associations, or other entities;
- 614 (c) providing an annuity:
- 615 (i) including an annuity issued in return for a gift; and
- 616 (ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2)
- 617 and (3);
- 618 (d) providing the characteristic services of a motor club as outlined in Subsection
- 619 [~~(113)~~] (115);
- 620 (e) providing another person with insurance;

(f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or surety, a contract or policy of title insurance;

(g) transacting or proposing to transact any phase of title insurance, including:

(i) solicitation;

(ii) negotiation preliminary to execution;

(iii) execution of a contract of title insurance;

(iv) insuring; and

(v) transacting matters subsequent to the execution of the contract and arising out of the contract, including reinsurance; ~~[and]~~

~~[(vi)]~~ (h) transacting or proposing a life settlement; and

~~[(h)]~~ (i) doing, or proposing to do, any business in substance equivalent to Subsections ~~[(85)]~~ (87)(a) through ~~[(g)]~~ (h) in a manner designed to evade this title.

~~[(86)]~~ (88) "Insurance consultant" or "consultant" means a person who:

(a) advises another person about insurance needs and coverages;

(b) is compensated by the person advised on a basis not directly related to the insurance placed; and

(c) except as provided in Section 31A-23a-501, is not compensated directly or indirectly by an insurer or producer for advice given.

~~[(87)]~~ (89) "Insurance holding company system" means a group of two or more affiliated persons, at least one of whom is an insurer.

~~[(88)]~~ (90) (a) "Insurance producer" or "producer" means a person licensed or required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

~~[(b) With regards to the selling, soliciting, or negotiating of an insurance product to an insurance customer or an insured:]~~

~~[(i) "producer"]~~ (b) (i) "Producer for the insurer" means a producer who is compensated directly or indirectly by an insurer for selling, soliciting, or negotiating [a] an insurance product of that insurer~~[-and]~~.

(ii) "Producer for the insurer" may be referred to as a "broker."

~~[(ii) "producer"]~~ (c) "Producer for the insured" means a producer who:

~~[(A)]~~ (i) is compensated directly and only by an insurance customer or an insured; and

~~[(B)]~~ (ii) receives no compensation directly or indirectly from an insurer for selling,

652 soliciting, or negotiating [a] an insurance product of that insurer to an insurance customer or
653 insured.

654 [~~(89)~~] (91) (a) "Insured" means a person to whom or for whose benefit an insurer
655 makes a promise in an insurance policy and includes:

- 656 (i) a policyholder;
- 657 (ii) a subscriber;
- 658 (iii) a member; and
- 659 (iv) a beneficiary.

660 (b) The definition in Subsection [~~(89)~~] (91)(a):

- 661 (i) applies only to this title; and
- 662 (ii) does not define the meaning of this word as used in an insurance policy or
663 certificate.

664 [~~(90)~~] (92) (a) "Insurer" means a person doing an insurance business as a principal
665 including:

- 666 (i) a fraternal benefit society;
- 667 (ii) an issuer of a gift annuity other than an annuity specified in Subsections
668 31A-22-1305(2) and (3);
- 669 (iii) a motor club;
- 670 (iv) an employee welfare plan; and
- 671 (v) a person purporting or intending to do an insurance business as a principal on that
672 person's own account.

673 (b) "Insurer" does not include a governmental entity to the extent the governmental
674 entity is engaged in an activity described in Section 31A-12-107.

675 [~~(91)~~] (93) "Interinsurance exchange" is defined in Subsection [~~(142)~~] (144).

676 [~~(92)~~] (94) "Involuntary unemployment insurance" means insurance:

- 677 (a) offered in connection with an extension of credit; and
- 678 (b) that provides indemnity if the debtor is involuntarily unemployed for payments
679 coming due on a:

- 680 (i) specific loan; or
- 681 (ii) credit transaction.

682 [~~(93)~~] (95) "Large employer," in connection with a health benefit plan, means an

683 employer who, with respect to a calendar year and to a plan year:

684 (a) employed an average of at least 51 eligible employees on each business day during
685 the preceding calendar year; and

686 (b) employs at least two employees on the first day of the plan year.

687 ~~[(94)]~~ (96) "Late enrollee," with respect to an employer health benefit plan, means an
688 individual whose enrollment is a late enrollment.

689 ~~[(95)]~~ (97) "Late enrollment," with respect to an employer health benefit plan, means
690 enrollment of an individual other than:

691 (a) on the earliest date on which coverage can become effective for the individual
692 under the terms of the plan; or

693 (b) through special enrollment.

694 ~~[(96)]~~ (98) (a) Except for a retainer contract or legal assistance described in Section
695 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a
696 specified legal expense.

697 (b) "Legal expense insurance" includes an arrangement that creates a reasonable
698 expectation of an enforceable right.

699 (c) "Legal expense insurance" does not include the provision of, or reimbursement for,
700 legal services incidental to other insurance coverage.

701 ~~[(97)]~~ (99) (a) "Liability insurance" means insurance against liability:

702 (i) for death, injury, or disability of a human being, or for damage to property,
703 exclusive of the coverages under:

704 (A) Subsection ~~[(107)]~~ (109) for medical malpractice insurance;

705 (B) Subsection ~~[(134)]~~ (136) for professional liability insurance; and

706 (C) Subsection ~~[(168)]~~ (170) for workers' compensation insurance;

707 (ii) for a medical, hospital, surgical, and funeral benefit to a person other than the
708 insured who is injured, irrespective of legal liability of the insured, when issued with or
709 supplemental to insurance against legal liability for the death, injury, or disability of a human
710 being, exclusive of the coverages under:

711 (A) Subsection ~~[(107)]~~ (109) for medical malpractice insurance;

712 (B) Subsection ~~[(134)]~~ (136) for professional liability insurance; and

713 (C) Subsection ~~[(168)]~~ (170) for workers' compensation insurance;

714 (iii) for loss or damage to property resulting from an accident to or explosion of a
715 boiler, pipe, pressure container, machinery, or apparatus;

716 (iv) for loss or damage to property caused by:

717 (A) the breakage or leakage of a sprinkler, water pipe, or water container; or

718 (B) water entering through a leak or opening in a building; or

719 (v) for other loss or damage properly the subject of insurance not within another kind
720 of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.

721 (b) "Liability insurance" includes:

722 (i) vehicle liability insurance;

723 (ii) residential dwelling liability insurance; and

724 (iii) making inspection of, and issuing a certificate of inspection upon, an elevator,
725 boiler, machinery, or apparatus of any kind when done in connection with insurance on the
726 elevator, boiler, machinery, or apparatus.

727 [~~(98)~~] (100) (a) "License" means authorization issued by the commissioner to engage in
728 an activity that is part of or related to the insurance business.

729 (b) "License" includes a certificate of authority issued to an insurer.

730 [~~(99)~~] (101) (a) "Life insurance" means:

731 (i) insurance on a human life; and

732 (ii) insurance pertaining to or connected with human life.

733 (b) The business of life insurance includes:

734 (i) granting a death benefit;

735 (ii) granting an annuity benefit;

736 (iii) granting an endowment benefit;

737 (iv) granting an additional benefit in the event of death by accident;

738 (v) granting an additional benefit to safeguard the policy against lapse; and

739 (vi) providing an optional method of settlement of proceeds.

740 [~~(100)~~] (102) "Limited license" means a license that:

741 (a) is issued for a specific product of insurance; and

742 (b) limits an individual or agency to transact only for that product or insurance.

743 [~~(101)~~] (103) "Limited line credit insurance" includes the following forms of
744 insurance:

745 (a) credit life;
746 (b) credit accident and health;
747 (c) credit property;
748 (d) credit unemployment;
749 (e) involuntary unemployment;
750 (f) mortgage life;
751 (g) mortgage guaranty;
752 (h) mortgage accident and health;
753 (i) guaranteed automobile protection; and
754 (j) another form of insurance offered in connection with an extension of credit that:
755 (i) is limited to partially or wholly extinguishing the credit obligation; and
756 (ii) the commissioner determines by rule should be designated as a form of limited line
757 credit insurance.

758 ~~[(102)]~~ (104) "Limited line credit insurance producer" means a person who sells,
759 solicits, or negotiates one or more forms of limited line credit insurance coverage to an
760 individual through a master, corporate, group, or individual policy.

761 ~~[(103)]~~ (105) "Limited line insurance" includes:

762 (a) bail bond;
763 (b) limited line credit insurance;
764 (c) legal expense insurance;
765 (d) motor club insurance;
766 (e) rental car-related insurance;
767 (f) travel insurance;
768 (g) crop insurance;
769 (h) self-service storage insurance; and
770 (i) another form of limited insurance that the commissioner determines by rule should
771 be designated a form of limited line insurance.

772 ~~[(104)]~~ (106) "Limited lines authority" includes:

773 (a) the lines of insurance listed in Subsection ~~[(103)]~~ (105); and
774 (b) a customer service representative.

775 ~~[(105)]~~ (107) "Limited lines producer" means a person who sells, solicits, or negotiates

776 limited lines insurance.

777 ~~[(106)]~~ (108) (a) "Long-term care insurance" means an insurance policy or rider

778 advertised, marketed, offered, or designated to provide coverage:

779 (i) in a setting other than an acute care unit of a hospital;

780 (ii) for not less than 12 consecutive months for a covered person on the basis of:

781 (A) expenses incurred;

782 (B) indemnity;

783 (C) prepayment; or

784 (D) another method;

785 (iii) for one or more necessary or medically necessary services that are:

786 (A) diagnostic;

787 (B) preventative;

788 (C) therapeutic;

789 (D) rehabilitative;

790 (E) maintenance; or

791 (F) personal care; and

792 (iv) that may be issued by:

793 (A) an insurer;

794 (B) a fraternal benefit society;

795 (C) (I) a nonprofit health hospital; and

796 (II) a medical service corporation;

797 (D) a prepaid health plan;

798 (E) a health maintenance organization; or

799 (F) an entity similar to the entities described in Subsections ~~[(106)]~~ (108)(a)(iv)(A)

800 through (E) to the extent that the entity is otherwise authorized to issue life or health care

801 insurance.

802 (b) "Long-term care insurance" includes:

803 (i) any of the following that provide directly or supplement long-term care insurance:

804 (A) a group or individual annuity or rider; or

805 (B) a life insurance policy or rider;

806 (ii) a policy or rider that provides for payment of benefits on the basis of:

807 (A) cognitive impairment; or
808 (B) functional capacity; or
809 (iii) a qualified long-term care insurance contract.
810 (c) "Long-term care insurance" does not include:
811 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
812 (ii) basic hospital expense coverage;
813 (iii) basic medical/surgical expense coverage;
814 (iv) hospital confinement indemnity coverage;
815 (v) major medical expense coverage;
816 (vi) income replacement or related asset-protection coverage;
817 (vii) accident only coverage;
818 (viii) coverage for a specified:
819 (A) disease; or
820 (B) accident;
821 (ix) limited benefit health coverage; or
822 (x) a life insurance policy that accelerates the death benefit to provide the option of a
823 lump sum payment:
824 (A) if the following are not conditioned on the receipt of long-term care:
825 (I) benefits; or
826 (II) eligibility; and
827 (B) the coverage is for one or more the following qualifying events:
828 (I) terminal illness;
829 (II) medical conditions requiring extraordinary medical intervention; or
830 (III) permanent institutional confinement.
831 [~~(107)~~] (109) "Medical malpractice insurance" means insurance against legal liability
832 incident to the practice and provision of a medical service other than the practice and provision
833 of a dental service.
834 [~~(108)~~] (110) "Member" means a person having membership rights in an insurance
835 corporation.
836 [~~(109)~~] (111) "Minimum capital" or "minimum required capital" means the capital that
837 must be constantly maintained by a stock insurance corporation as required by statute.

838 ~~[(110)]~~ (112) "Mortgage accident and health insurance" means insurance offered in
839 connection with an extension of credit that provides indemnity for payments coming due on a
840 mortgage while the debtor is disabled.

841 ~~[(111)]~~ (113) "Mortgage guaranty insurance" means surety insurance under which a
842 mortgagee or other creditor is indemnified against losses caused by the default of a debtor.

843 ~~[(112)]~~ (114) "Mortgage life insurance" means insurance on the life of a debtor in
844 connection with an extension of credit that pays if the debtor dies.

845 ~~[(113)]~~ (115) "Motor club" means a person:

846 (a) licensed under:

847 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

848 (ii) Chapter 11, Motor Clubs; or

849 (iii) Chapter 14, Foreign Insurers; and

850 (b) that promises for an advance consideration to provide for a stated period of time
851 one or more:

852 (i) legal services under Subsection 31A-11-102(1)(b);

853 (ii) bail services under Subsection 31A-11-102(1)(c); or

854 (iii) (A) trip reimbursement;

855 (B) towing services;

856 (C) emergency road services;

857 (D) stolen automobile services;

858 (E) a combination of the services listed in Subsections ~~[(113)]~~ (115)(b)(iii)(A) through
859 (D); or

860 (F) other services given in Subsections 31A-11-102(1)(b) through (f).

861 ~~[(114)]~~ (116) "Mutual" means a mutual insurance corporation.

862 ~~[(115)]~~ (117) "Network plan" means health care insurance:

863 (a) that is issued by an insurer; and

864 (b) under which the financing and delivery of medical care is provided, in whole or in
865 part, through a defined set of providers under contract with the insurer, including the financing
866 and delivery of an item paid for as medical care.

867 ~~[(116)]~~ (118) "Nonparticipating" means a plan of insurance under which the insured is
868 not entitled to receive a dividend representing a share of the surplus of the insurer.

869 ~~[(117)]~~ (119) "Ocean marine insurance" means insurance against loss of or damage to:

870 (a) ships or hulls of ships;

871 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, money,

872 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia

873 interests, or other cargoes in or awaiting transit over the oceans or inland waterways;

874 (c) earnings such as freight, passage money, commissions, or profits derived from

875 transporting goods or people upon or across the oceans or inland waterways; or

876 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,

877 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons

878 in connection with maritime activity.

879 ~~[(118)]~~ (120) "Order" means an order of the commissioner.

880 ~~[(119)]~~ (121) "Outline of coverage" means a summary that explains an accident and

881 health insurance policy.

882 ~~[(120)]~~ (122) "Participating" means a plan of insurance under which the insured is

883 entitled to receive a dividend representing a share of the surplus of the insurer.

884 ~~[(121)]~~ (123) "Participation," as used in a health benefit plan, means a requirement

885 relating to the minimum percentage of eligible employees that must be enrolled in relation to

886 the total number of eligible employees of an employer reduced by each eligible employee who

887 voluntarily declines coverage under the plan because the employee:

888 (a) has other group health care insurance coverage; or

889 (b) receives:

890 (i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social

891 Security Amendments of 1965; or

892 (ii) another government health benefit.

893 ~~[(122)]~~ (124) "Person" includes:

894 (a) an individual;

895 (b) a partnership;

896 (c) a corporation;

897 (d) an incorporated or unincorporated association;

898 (e) a joint stock company;

899 (f) a trust;

- 900 (g) a limited liability company;
- 901 (h) a reciprocal;
- 902 (i) a syndicate; or
- 903 (j) another similar entity or combination of entities acting in concert.
- 904 [~~(123)~~] (125) "Personal lines insurance" means property and casualty insurance
- 905 coverage sold for primarily noncommercial purposes to:
- 906 (a) an individual; or
- 907 (b) a family.
- 908 [~~(124)~~] (126) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).
- 909 [~~(125)~~] (127) "Plan year" means:
- 910 (a) the year that is designated as the plan year in:
- 911 (i) the plan document of a group health plan; or
- 912 (ii) a summary plan description of a group health plan;
- 913 (b) if the plan document or summary plan description does not designate a plan year or
- 914 there is no plan document or summary plan description:
- 915 (i) the year used to determine deductibles or limits;
- 916 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;
- 917 or
- 918 (iii) the employer's taxable year if:
- 919 (A) the plan does not impose deductibles or limits on a yearly basis; and
- 920 (B) (I) the plan is not insured; or
- 921 (II) the insurance policy is not renewed on an annual basis; or
- 922 (c) in a case not described in Subsection [~~(125)~~] (127)(a) or (b), the calendar year.
- 923 [~~(126)~~] (128) (a) "Policy" means a document, including an attached endorsement or
- 924 application that:
- 925 (i) purports to be an enforceable contract; and
- 926 (ii) memorializes in writing some or all of the terms of an insurance contract.
- 927 (b) "Policy" includes a service contract issued by:
- 928 (i) a motor club under Chapter 11, Motor Clubs;
- 929 (ii) a service contract provided under Chapter 6a, Service Contracts; and
- 930 (iii) a corporation licensed under:

(A) Chapter 7, Nonprofit Health Service Insurance Corporations; or
(B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

(c) "Policy" does not include:

- (i) a certificate under a group insurance contract; or
- (ii) a document that does not purport to have legal effect.

~~[(127)]~~ (129) "Policyholder" means a person who controls a policy, binder, or oral contract by ownership, premium payment, or otherwise.

~~[(128)]~~ (130) "Policy illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years.

~~[(129)]~~ (131) "Policy summary" means a synopsis describing the elements of a life insurance policy.

~~[(130)]~~ (132) "Preexisting condition," with respect to a health benefit plan:

(a) means a condition that was present before the effective date of coverage, whether or not medical advice, diagnosis, care, or treatment was recommended or received before that day; and

(b) does not include a condition indicated by genetic information unless an actual diagnosis of the condition by a physician has been made.

~~[(131)]~~ (133) (a) "Premium" means the monetary consideration for an insurance policy.

(b) "Premium" includes, however designated:

- (i) an assessment;
- (ii) a membership fee;
- (iii) a required contribution; or
- (iv) monetary consideration.

(c) (i) "Premium" does not include consideration paid to a third party administrator for the third party administrator's services.

(ii) "Premium" includes an amount paid by a third party administrator to an insurer for insurance on the risks administered by the third party administrator.

~~[(132)]~~ (134) "Principal officers" for a corporation means the officers designated under Subsection 31A-5-203(3).

~~[(133)]~~ (135) "Proceeding" includes an action or special statutory proceeding.

~~[(134)]~~ (136) "Professional liability insurance" means insurance against legal liability

962 incident to the practice of a profession and provision of a professional service.

963 ~~[(135)]~~ (137) (a) Except as provided in Subsection ~~[(135)]~~ (137)(b), "property
964 insurance" means insurance against loss or damage to real or personal property of every kind
965 and any interest in that property:

966 (i) from all hazards or causes; and

967 (ii) against loss consequential upon the loss or damage including vehicle
968 comprehensive and vehicle physical damage coverages.

969 (b) "Property insurance" does not include:

970 (i) inland marine insurance; and

971 (ii) ocean marine insurance.

972 ~~[(136)]~~ (138) "Qualified long-term care insurance contract" or "federally tax qualified
973 long-term care insurance contract" means:

974 (a) an individual or group insurance contract that meets the requirements of Section
975 7702B(b), Internal Revenue Code; or

976 (b) the portion of a life insurance contract that provides long-term care insurance:

977 (i) (A) by rider; or

978 (B) as a part of the contract; and

979 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue
980 Code.

981 ~~[(137)]~~ (139) "Qualified United States financial institution" means an institution that:

982 (a) is:

983 (i) organized under the laws of the United States or any state; or

984 (ii) in the case of a United States office of a foreign banking organization, licensed
985 under the laws of the United States or any state;

986 (b) is regulated, supervised, and examined by a United States federal or state authority
987 having regulatory authority over a bank or trust company; and

988 (c) meets the standards of financial condition and standing that are considered
989 necessary and appropriate to regulate the quality of a financial institution whose letters of credit
990 will be acceptable to the commissioner as determined by:

991 (i) the commissioner by rule; or

992 (ii) the Securities Valuation Office of the National Association of Insurance

Commissioners.

~~(138)~~ (140) (a) "Rate" means:

(i) the cost of a given unit of insurance; or

(ii) for property or casualty insurance, that cost of insurance per exposure unit either expressed as:

(A) a single number; or

(B) a pure premium rate, adjusted before the application of individual risk variations based on loss or expense considerations to account for the treatment of:

(I) expenses;

(II) profit; and

(III) individual insurer variation in loss experience.

(b) "Rate" does not include a minimum premium.

~~(139)~~ (141) (a) Except as provided in Subsection ~~(139)~~ (141)(b), "rate service organization" means a person who assists an insurer in rate making or filing by:

(i) collecting, compiling, and furnishing loss or expense statistics;

(ii) recommending, making, or filing rates or supplementary rate information; or

(iii) advising about rate questions, except as an attorney giving legal advice.

(b) "Rate service organization" does not mean:

(i) an employee of an insurer;

(ii) a single insurer or group of insurers under common control;

(iii) a joint underwriting group; or

(iv) an individual serving as an actuarial or legal consultant.

~~(140)~~ (142) "Rating manual" means any of the following used to determine initial and renewal policy premiums:

(a) a manual of rates;

(b) a classification;

(c) a rate-related underwriting rule; and

(d) a rating formula that describes steps, policies, and procedures for determining initial and renewal policy premiums.

~~(141)~~ (143) "Received by the department" means:

(a) the date delivered to and stamped received by the department, if delivered in

- 1024 person;
- 1025 (b) the post mark date, if delivered by mail;
- 1026 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;
- 1027 (d) the received date recorded on an item delivered, if delivered by:
- 1028 (i) facsimile;
- 1029 (ii) email; or
- 1030 (iii) another electronic method; or
- 1031 (e) a date specified in:
- 1032 (i) a statute;
- 1033 (ii) a rule; or
- 1034 (iii) an order.
- 1035 [~~(142)~~] (144) "Reciprocal" or "interinsurance exchange" means an unincorporated
- 1036 association of persons:
- 1037 (a) operating through an attorney-in-fact common to all of the persons; and
- 1038 (b) exchanging insurance contracts with one another that provide insurance coverage
- 1039 on each other.
- 1040 [~~(143)~~] (145) "Reinsurance" means an insurance transaction where an insurer, for
- 1041 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
- 1042 reinsurance transactions, this title sometimes refers to:
- 1043 (a) the insurer transferring the risk as the "ceding insurer"; and
- 1044 (b) the insurer assuming the risk as the:
- 1045 (i) "assuming insurer"; or
- 1046 (ii) "assuming reinsurer."
- 1047 [~~(144)~~] (146) "Reinsurer" means a person licensed in this state as an insurer with the
- 1048 authority to assume reinsurance.
- 1049 [~~(145)~~] (147) "Residential dwelling liability insurance" means insurance against
- 1050 liability resulting from or incident to the ownership, maintenance, or use of a residential
- 1051 dwelling that is a detached single family residence or multifamily residence up to four units.
- 1052 [~~(146)~~] (148) (a) "Retrocession" means reinsurance with another insurer of a liability
- 1053 assumed under a reinsurance contract.
- 1054 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a

- 1055 liability assumed under a reinsurance contract.
- 1056 [~~(147)~~] (149) "Rider" means an endorsement to:
- 1057 (a) an insurance policy; or
- 1058 (b) an insurance certificate.
- 1059 [~~(148)~~] (150) (a) "Security" means a:
- 1060 (i) note;
- 1061 (ii) stock;
- 1062 (iii) bond;
- 1063 (iv) debenture;
- 1064 (v) evidence of indebtedness;
- 1065 (vi) certificate of interest or participation in a profit-sharing agreement;
- 1066 (vii) collateral-trust certificate;
- 1067 (viii) preorganization certificate or subscription;
- 1068 (ix) transferable share;
- 1069 (x) investment contract;
- 1070 (xi) voting trust certificate;
- 1071 (xii) certificate of deposit for a security;
- 1072 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
- 1073 payments out of production under such a title or lease;
- 1074 (xiv) commodity contract or commodity option;
- 1075 (xv) certificate of interest or participation in, temporary or interim certificate for,
- 1076 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
- 1077 in Subsections [~~(148)~~] (150)(a)(i) through (xiv); or
- 1078 (xvi) another interest or instrument commonly known as a security.
- 1079 (b) "Security" does not include:
- 1080 (i) any of the following under which an insurance company promises to pay money in a
- 1081 specific lump sum or periodically for life or some other specified period:
- 1082 (A) insurance;
- 1083 (B) an endowment policy; or
- 1084 (C) an annuity contract; or
- 1085 (ii) a burial certificate or burial contract.

1086 ~~[(149)]~~ (151) "Secondary medical condition" means a complication related to an
1087 exclusion from coverage in accident and health insurance.

1088 ~~[(150)]~~ (152) (a) "Self-insurance" means an arrangement under which a person
1089 provides for spreading its own risks by a systematic plan.

1090 ~~[(a)]~~ (b) Except as provided in this Subsection ~~[(150)]~~ (152), "self-insurance" does not
1091 include an arrangement under which a number of persons spread their risks among themselves.

1092 ~~[(b)]~~ (c) "Self-insurance" includes:

1093 (i) an arrangement by which a governmental entity undertakes to indemnify an
1094 employee for liability arising out of the employee's employment; and

1095 (ii) an arrangement by which a person with a managed program of self-insurance and
1096 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or
1097 employees for liability or risk that is related to the relationship or employment.

1098 ~~[(c)]~~ (d) "Self-insurance" does not include an arrangement with an independent
1099 contractor.

1100 ~~[(151)]~~ (153) "Sell" means to exchange a contract of insurance:

1101 (a) by any means;

1102 (b) for money or its equivalent; and

1103 (c) on behalf of an insurance company.

1104 ~~[(152)]~~ (154) "Short-term care insurance" means an insurance policy or rider
1105 advertised, marketed, offered, or designed to provide coverage that is similar to long-term care
1106 insurance, but that provides coverage for less than 12 consecutive months for each covered
1107 person.

1108 ~~[(153)]~~ (155) "Significant break in coverage" means a period of 63 consecutive days
1109 during each of which an individual does not have creditable coverage.

1110 ~~[(154)]~~ (156) "Small employer," in connection with a health benefit plan, means an
1111 employer who, with respect to a calendar year and to a plan year:

1112 (a) employed an average of at least two employees but not more than 50 eligible
1113 employees on each business day during the preceding calendar year; and

1114 (b) employs at least two employees on the first day of the plan year.

1115 ~~[(155)]~~ (157) "Special enrollment period," in connection with a health benefit plan, has
1116 the same meaning as provided in federal regulations adopted pursuant to the Health Insurance

1117 Portability and Accountability Act [~~of 1996, Pub. L. 104-191, 110 Stat. 1936~~].

1118 [~~(156)~~] (158) (a) "Subsidiary" of a person means an affiliate controlled by that person
1119 either directly or indirectly through one or more affiliates or intermediaries.

1120 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting
1121 shares are owned by that person either alone or with its affiliates, except for the minimum
1122 number of shares the law of the subsidiary's domicile requires to be owned by directors or
1123 others.

1124 [~~(157)~~] (159) Subject to Subsection [~~(83)~~] (85)(b), "surety insurance" includes:

1125 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or
1126 perform the principal's obligations to a creditor or other obligee;

1127 (b) bail bond insurance; and

1128 (c) fidelity insurance.

1129 [~~(158)~~] (160) (a) "Surplus" means the excess of assets over the sum of paid-in capital
1130 and liabilities.

1131 (b) (i) "Permanent surplus" means the surplus of a mutual insurer that is designated by
1132 the insurer as permanent.

1133 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require
1134 that mutuals doing business in this state maintain specified minimum levels of permanent
1135 surplus.

1136 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the
1137 same as the minimum required capital requirement that applies to stock insurers.

1138 (c) "Excess surplus" means:

1139 (i) for a life insurer, accident and health insurer, health organization, or property and
1140 casualty insurer as defined in Section 31A-17-601, the lesser of:

1141 (A) that amount of an insurer's or health organization's total adjusted capital that
1142 exceeds the product of:

1143 (I) 2.5; and

1144 (II) the sum of the insurer's or health organization's minimum capital or permanent
1145 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1146 (B) that amount of an insurer's or health organization's total adjusted capital that
1147 exceeds the product of:

1148 (I) 3.0; and

1149 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1150 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer

1151 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1152 (A) 1.5; and

1153 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

1154 ~~[(159)]~~ (161) "Third party administrator" or "administrator" means a person who

1155 collects charges or premiums from, or who, for consideration, adjusts or settles claims of

1156 residents of the state in connection with insurance coverage, annuities, or service insurance

1157 coverage, except:

1158 (a) a union on behalf of its members;

1159 (b) a person administering a:

1160 (i) pension plan subject to the federal Employee Retirement Income Security Act of

1161 1974;

1162 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

1163 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

1164 (c) an employer on behalf of the employer's employees or the employees of one or

1165 more of the subsidiary or affiliated corporations of the employer;

1166 (d) an insurer licensed under ~~[Chapter 5, 7, 8, 9, or 14]~~ the following, but only for a

1167 line of insurance for which the insurer holds a license in this state~~[-or]~~:

1168 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

1169 (ii) Chapter 7, Nonprofit Health Service Insurance Corporations;

1170 (iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;

1171 (iv) Chapter 9, Insurance Fraternal; or

1172 (v) Chapter 14, Foreign Insurers; or

1173 (e) a person:

1174 (i) licensed or exempt from licensing under:

1175 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and

1176 Reinsurance Intermediaries; or

1177 (B) Chapter 26, Insurance Adjusters; and

1178 (ii) whose activities are limited to those authorized under the license the person holds

1179 or for which the person is exempt.

1180 ~~[(160)]~~ (162) "Title insurance" means the insuring, guaranteeing, or indemnifying of an
1181 owner of real or personal property or the holder of liens or encumbrances on that property, or
1182 others interested in the property against loss or damage suffered by reason of liens or
1183 encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity
1184 or unenforceability of any liens or encumbrances on the property.

1185 ~~[(161)]~~ (163) "Total adjusted capital" means the sum of an insurer's or health
1186 organization's statutory capital and surplus as determined in accordance with:

1187 (a) the statutory accounting applicable to the annual financial statements required to be
1188 filed under Section 31A-4-113; and

1189 (b) another item provided by the RBC instructions, as RBC instructions is defined in
1190 Section 31A-17-601.

1191 ~~[(162)]~~ (164) (a) "Trustee" means "director" when referring to the board of directors of
1192 a corporation.

1193 (b) "Trustee," when used in reference to an employee welfare fund, means an
1194 individual, firm, association, organization, joint stock company, or corporation, whether acting
1195 individually or jointly and whether designated by that name or any other, that is charged with
1196 or has the overall management of an employee welfare fund.

1197 ~~[(163)]~~ (165) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted
1198 insurer" means an insurer:

1199 (i) not holding a valid certificate of authority to do an insurance business in this state;
1200 or

1201 (ii) transacting business not authorized by a valid certificate.

1202 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1203 (i) holding a valid certificate of authority to do an insurance business in this state; and

1204 (ii) transacting business as authorized by a valid certificate.

1205 ~~[(164)]~~ (166) "Underwrite" means the authority to accept or reject risk on behalf of the
1206 insurer.

1207 ~~[(165)]~~ (167) "Vehicle liability insurance" means insurance against liability resulting
1208 from or incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a
1209 vehicle comprehensive or vehicle physical damage coverage under Subsection ~~[(135)]~~ (137).

1210 ~~[(166)]~~ (168) "Voting security" means a security with voting rights, and includes a
1211 security convertible into a security with a voting right associated with the security.

1212 ~~[(167)]~~ (169) "Waiting period" for a health benefit plan means the period that must
1213 pass before coverage for an individual, who is otherwise eligible to enroll under the terms of
1214 the health benefit plan, can become effective.

1215 ~~[(168)]~~ (170) "Workers' compensation insurance" means:

1216 (a) insurance for indemnification of an employer against liability for compensation
1217 based on:

1218 (i) a compensable accidental injury; and

1219 (ii) occupational disease disability;

1220 (b) employer's liability insurance incidental to workers' compensation insurance and
1221 written in connection with workers' compensation insurance; and

1222 (c) insurance assuring to a person entitled to workers' compensation benefits the
1223 compensation provided by law.

1224 Section 2. Section **31A-2-208** is amended to read:

1225 **31A-2-208. Publications.**

1226 (1) The commissioner may prepare and distribute books, pamphlets, and other
1227 publications relating to insurance. Except as otherwise provided under this title, the
1228 ~~[insurance]~~ commissioner may charge the cost of producing ~~[the publications]~~ a publication to
1229 those desiring to receive ~~[them]~~ the publication. Money collected from subscription fees
1230 charged for ~~[these publications]~~ a publication shall be deposited ~~[as dedicated credits to be used~~
1231 ~~solely for the production and mailing costs of the publications]~~ into the Relative Value Study
1232 Restricted Account, created in Section 59-9-105, to be used as provided in Section 59-9-105.

1233 (2) The commissioner shall have the annual report required in Subsection
1234 31A-2-207(5) printed;

1235 ~~(a)~~ in a form determined by ~~[him]~~ the commissioner; and

1236 ~~(b)~~ in sufficient numbers to meet ~~[all]~~ requests for copies.

1237 (3) The commissioner shall publish in ~~[his]~~ the annual report required in Subsection
1238 31A-2-207(5) an up-to-date chart and explanation of the organization of ~~[his]~~ the
1239 commissioner's office, making clear the allocation of responsibility and authority among the
1240 staff. This ~~[document]~~ up-to-date chart and explanation shall be printed in sufficient numbers

1241 ~~[sufficient]~~ to meet ~~[all]~~ requests for copies.

1242 Section 3. Section **31A-2-212** is amended to read:

1243 **31A-2-212. Miscellaneous duties.**

1244 (1) Upon issuance of ~~[any]~~ an order limiting, suspending, or revoking ~~[an insurer's]~~ a
1245 person's authority to do business in Utah, and ~~[on institution of any proceedings]~~ when the
1246 commissioner begins a proceeding against ~~[the]~~ an insurer under Chapter 27a, Insurer
1247 Receivership Act, the commissioner:

1248 (a) shall notify by mail ~~[all agents]~~ the producers of the person or insurer of whom the
1249 commissioner has record; and

1250 (b) may publish notice of the order or proceeding in any manner the commissioner
1251 considers necessary to protect the rights of the public.

1252 (2) When required for evidence in ~~[any]~~ a legal proceeding, the commissioner shall
1253 furnish a certificate of ~~[the]~~ authority of ~~[any]~~ a licensee to transact ~~[insurance]~~ the business of
1254 insurance in Utah on any particular date. The court or other officer shall receive the certificate
1255 of authority in lieu of the commissioner's testimony.

1256 (3) (a) On the request of ~~[any]~~ an insurer authorized to do a surety business, the
1257 commissioner shall furnish a copy of the insurer's certificate of authority to ~~[any]~~ a designated
1258 public officer in this state who requires that certificate of authority before accepting a bond.

1259 (b) The public officer described in Subsection (3)(a) shall file the certificate of
1260 authority furnished under Subsection (3)(a).

1261 (c) After a certified copy of a certificate of authority ~~[has been]~~ is furnished to a public
1262 officer, it is not necessary, while the certificate of authority remains effective, to attach a copy
1263 of it to any instrument of suretyship filed with that public officer.

1264 (d) Whenever the commissioner revokes the certificate of authority or ~~[starts~~
1265 ~~proceedings]~~ begins a proceeding under Chapter 27a, Insurer Receivership Act, against ~~[any]~~
1266 an insurer authorized to do a surety business, the commissioner shall immediately give notice
1267 of that action to each public officer who ~~[was]~~ is sent a certified copy under this Subsection (3).

1268 (4) (a) The commissioner shall immediately notify every judge and clerk of ~~[all]~~ the
1269 courts of record in the state when:

1270 (i) an authorized insurer doing a surety business:

1271 (A) files a petition for receivership; or

1272 (B) is in receivership; or
 1273 (ii) the commissioner has reason to believe that the authorized insurer doing surety
 1274 business:
 1275 (A) is in financial difficulty; or
 1276 (B) has unreasonably failed to carry out any of its contracts.
 1277 (b) Upon the receipt of the notice required by this Subsection (4) it is the duty of the
 1278 judges and clerks to notify and require ~~[every]~~ a person that ~~[has filed]~~ files with the court a
 1279 bond on which the authorized insurer doing surety business is surety, to immediately file a new
 1280 bond with a new surety.

1281 (5) The commissioner shall require an insurer that issues, sells, renews, or offers health
 1282 insurance coverage in this state to comply with the Health Insurance Portability and
 1283 Accountability Act~~[- P.L. 104-191, pursuant to 110 Stat. 1968, Sec. 2722].~~

1284 Section 4. Section **31A-3-304** is amended to read:

1285 **31A-3-304. Annual fees -- Other taxes or fees prohibited -- Captive Insurance**
 1286 **Restricted Account.**

1287 (1) (a) A captive insurance company shall pay an annual fee imposed under this section
 1288 to obtain or renew a certificate of authority.

1289 (b) The commissioner shall:

1290 (i) determine the annual fee pursuant to Section 31A-3-103; and

1291 (ii) consider whether the annual fee is competitive with fees imposed by other states on
 1292 captive insurance companies.

1293 (2) A captive insurance company that fails to pay the fee required by this section is
 1294 subject to the relevant sanctions of this title.

1295 (3) (a) Except as provided in Subsection (3)~~[(b)]~~[(d)] and notwithstanding Title 59,
 1296 Chapter 9, Taxation of Admitted Insurers, ~~[the fee provided for in this section constitutes the~~
 1297 ~~sole tax or fee]~~ the following constitute the sole taxes, fees, or charges under the laws of this
 1298 state that may be ~~[otherwise]~~ levied or assessed on a captive insurance company~~[-, and no other~~
 1299 ~~occupation tax or other tax or fee may be levied or collected from a captive insurance company~~
 1300 ~~by the state or a county, city, or municipality within this state.];~~

1301 ~~[(b) Notwithstanding Subsection (3)(a), a]~~

1302 (i) a fee under this section;

1303 (ii) a fee under Chapter 37, Captive Insurance Companies Act; and
1304 (iii) a fee under Chapter 37a, Special Purpose Financial Captive Insurance Company
1305 Act.

1306 (b) The state or a county, city, or town within the state may not levy or collect an
1307 occupation tax or other tax, fee, or charge not described in Subsection (3)(a)(i) through (iii)
1308 against a captive insurance company.

1309 (c) The state may not levy, assess, or collect a withdrawal fee under Section 31A-4-115
1310 against a captive insurance company.

1311 (d) A captive insurance company is subject to real and personal property taxes.

1312 (4) A captive insurance company shall pay the fee imposed by this section to the
1313 commissioner by ~~[March 31]~~ June 20 of each year.

1314 (5) (a) Money received pursuant to ~~[Subsection (2)]~~ a fee described in Subsection
1315 (3)(a) shall be deposited into the Captive Insurance Restricted Account.

1316 (b) There is created in the General Fund a restricted account known as the "Captive
1317 Insurance Restricted Account."

1318 (c) The Captive Insurance Restricted Account shall consist of the fees ~~[imposed by the~~
1319 ~~commissioner in accordance with this section]~~ described in Subsection (3)(a).

1320 (d) The commissioner shall administer the Captive Insurance Restricted Account.
1321 Subject to appropriations by the Legislature, the commissioner shall use the money deposited
1322 into the Captive Insurance Restricted Account to:

1323 (i) administer and enforce;

1324 (A) Chapter 37, Captive Insurance Companies Act; and
1325 (B) Chapter 37a, Special Purpose Financial Captive Insurance Company Act; and
1326 (ii) promote the captive insurance industry in Utah.

1327 (e) An appropriation from the Captive Insurance Restricted Account is nonlapsing,
1328 except that at the end of each fiscal year, money received by the commissioner in excess of
1329 ~~[\$600,000]~~ \$950,000 shall be treated as free revenue in the General Fund.

1330 Section 5. Section **31A-14-211** is amended to read:

1331 **31A-14-211. Restrictions on foreign title insurers.**

1332 (1) An authorized foreign title insurer may not insure property in this state except:

1333 (a) through a title insurance producer who is a resident in Utah; or

- 1334 (b) through a bona fide ~~[branch]~~ office in Utah;
- 1335 (i) that is under the direction and control of the authorized foreign title insurer ~~[that~~
- 1336 ~~pays all]~~;
- 1337 (ii) for which the authorized foreign title insurer pays the expenses ~~[of the branch~~
- 1338 ~~office]~~, including compensation of ~~[all]~~ the employees ~~[; or]~~ of the bona fide office;
- 1339 (iii) at which a person may request information about title services related to a real
- 1340 estate transaction for which the person is a party;
- 1341 (iv) at which a person may deliver written communications to the authorized foreign
- 1342 title insurer as required by the real estate transaction for which the person is a party; and
- 1343 (v) at which a person may deliver escrow money related to a real estate transaction for
- 1344 which the person is a party.

1345 ~~[(c) through a subsidiary title insurer authorized to do business in Utah.]~~

1346 (2) This section does not apply to reinsurance.

1347 Section 6. Section **31A-22-607** is amended to read:

1348 **31A-22-607. Grace period.**

1349 (1) ~~[Every]~~ (a) An individual or franchise accident and health insurance policy shall

1350 contain one or more clauses providing for a grace period for premium payment only of:

- 1351 (i) at least 15 days for a weekly or monthly premium ~~[policies]~~ policy; and
- 1352 (ii) 30 days for ~~[all other policies]~~ a policy that is not a weekly or monthly premium
- 1353 policy, for each premium after the first premium payment. ~~[A carrier]~~

1354 (b) An insurer may elect to include a grace period that is longer than 15 days for a

1355 weekly or monthly ~~[policies]~~ policy.

1356 ~~[(a) The]~~ (c) An individual or franchise accident and health insurance policy is not in

1357 force during ~~[the]~~ a grace period.

1358 ~~[(b) If the]~~ (d) If an insurer receives payment before ~~[the]~~ a grace period expires, the

1359 individual or franchise accident and health insurance policy continues in force with no gap in

1360 coverage.

1361 ~~[(c) If the]~~ (e) If an insurer does not receive payment before ~~[the]~~ a grace period

1362 expires, the ~~[policy shall be]~~ individual or franchise accident and health insurance policy is

1363 terminated as of the last date for which the premium ~~[was]~~ is paid in full.

1364 ~~[(d)]~~ (f) A grace period is not required if the policyholder has requested that the

1365 individual or franchise accident and health insurance policy be discontinued.

1366 (2) ~~[Every]~~ (a) A group or blanket accident and health insurance policy shall provide
1367 for a grace period of at least 30 days, unless the policyholder gives written notice of
1368 discontinuance ~~[prior to]~~ before the date of discontinuance, in accordance with the policy
1369 terms. ~~[In group or blanket policies, the]~~

1370 (b) A group or blanket accident and health insurance policy is in force during a grace
1371 period.

1372 (c) If an insurer does not receive payment before a grace period expires, the group or
1373 blanket accident and health policy is terminated as of the last day of the grace period.

1374 (d) A group or blanket accident and health insurance policy may provide for payment
1375 of a pro rata premium for the period the group or blanket accident and health insurance policy
1376 is in effect during ~~[the]~~ a grace period under this Subsection (2).

1377 (3) If ~~[the]~~ an insurer has not guaranteed the insured a right to renew an accident and
1378 health policy, ~~[any]~~ a grace period beyond the expiration or anniversary date may, if provided
1379 in the accident and health insurance policy, be cut off by compliance with the notice provision
1380 under Subsection 31A-21-303(4)(b).

1381 Section 7. Section **31A-22-610.6** is amended to read:

1382 **31A-22-610.6. Special enrollment for individuals receiving premium assistance.**

1383 (1) As used in this section:

1384 (a) "Premium assistance" means assistance under Title 26, Chapter 18, Medical
1385 Assistance Act, in the payment of premium.

1386 (b) "Qualified beneficiary" means an individual who is approved to receive premium
1387 assistance.

1388 (2) Subject to the other provisions in this section, an individual may enroll under this
1389 section at a time outside of an employer health benefit plan open enrollment period, regardless
1390 of previously waiving coverage, if the individual is:

1391 (a) a qualified beneficiary who is eligible for coverage as an employee under the
1392 employer health benefit plan; or

1393 (b) a dependent of the qualified beneficiary who is eligible for coverage under the
1394 employer health benefit plan.

1395 (3) To be eligible to enroll outside of an open enrollment period, an individual

described in Subsection (2) shall enroll in the employer health benefit plan by no later than 30 days from the day on which the qualified beneficiary receives initial written notification, after July 1, 2008, that the qualified beneficiary is eligible to receive premium assistance.

(4) An individual described in Subsection (2) may enroll under this section only in an employer health benefit plan that is available at the time of enrollment to similarly situated eligible employees or dependents of eligible employees.

(5) Coverage under an employer health benefit plan for an individual described in Subsection (2) may begin as soon as the first day of the month immediately following enrollment of the individual in accordance with this section.

(6) This section does not modify any requirement related to premiums that applies under an employer health benefit plan to a similarly situated eligible employee or dependent of an eligible employee under the employer health benefit plan.

(7) An employer health benefit plan may require an individual described in Subsection (2) to satisfy a preexisting condition waiting period that:

(a) is allowed under the Health Insurance Portability and Accountability Act [~~of 1996, Pub. L. 104-191, 110 Stat. 1936~~]; and

(b) is not longer than 12 months.

Section 8. Section **31A-22-614.5** is amended to read:

31A-22-614.5. Uniform claims processing -- Electronic exchange of health information.

(1) (a) Except as provided in Subsection (1)(c), all insurers offering health insurance shall use a uniform claim form and uniform billing and claim codes.

(b) Beginning January 1, 2011, all health benefit plans, and dental and vision plans, shall provide for the electronic exchange of uniform:

(i) eligibility and coverage information; and

(ii) coordination of benefits information.

(c) For purposes of Subsection (1)(a), "health insurance" does not include a policy or certificate that provides benefits solely for:

(i) income replacement; or

(ii) long-term care.

(2) (a) The uniform electronic standards and information required in Subsection (1)

1427 shall be adopted and approved by the commissioner in accordance with Title 63G, Chapter 3,
1428 Utah Administrative Rulemaking Act.

1429 (b) When adopting rules under this section the commissioner:

1430 (i) shall:

1431 (A) consult with national and state organizations involved with the standardized
1432 exchange of health data, and the electronic exchange of health data, to develop the standards
1433 for the use and electronic exchange of uniform:

1434 (I) claim forms;

1435 (II) billing and claim codes;

1436 (III) insurance eligibility and coverage information; and

1437 (IV) coordination of benefits information; and

1438 (B) meet federal mandatory minimum standards following the adoption of national
1439 requirements for transaction and data elements in the federal Health Insurance Portability and
1440 Accountability Act [~~of 1996, Pub. L. 104-191, 110 Stat. 1936~~];

1441 (ii) may not require an insurer or administrator to use a specific software product or
1442 vendor; and

1443 (iii) may require an insurer who participates in the all payer database created under
1444 Section 26-33a-106.1 to allow data regarding demographic and insurance coverage information
1445 to be electronically shared with the state's designated secure health information master person
1446 index to be used:

1447 (A) in compliance with data security standards established by:

1448 (I) the federal Health Insurance Portability and Accountability Act [~~of 1996, Pub. L.~~
1449 ~~104-191, 110 Stat. 1936~~]; and

1450 (II) the electronic commerce agreements established in a business associate agreement;
1451 and

1452 (B) for the purpose of coordination of health benefit plans.

1453 (3) (a) The commissioner shall coordinate the administrative rules adopted under the
1454 provisions of this section with the administrative rules adopted by the Department of Health for
1455 the implementation of the standards for the electronic exchange of clinical health information
1456 under Section 26-1-37. The department shall establish procedures for developing the rules
1457 adopted under this section, which ensure that the Department of Health is given the opportunity

1458 to comment on proposed rules.

1459 (b) (i) The commissioner may provide information to health care providers regarding
1460 resources available to a health care provider to verify whether a health care provider's practice
1461 management software system meets the uniform electronic standards for data exchange
1462 required by this section.

1463 (ii) The commissioner may provide the information described in Subsection (3)(b)(i)
1464 by partnering with:

1465 (A) a not-for-profit, broad based coalition of state health care insurers and health care
1466 providers who are involved in the electronic exchange of the data required by this section; or

1467 (B) some other person that the commissioner determines is appropriate to provide the
1468 information described in Subsection (3)(b)(i).

1469 (c) The commissioner shall regulate any fees charged by insurers to the providers for:

1470 (i) uniform claim forms;

1471 (ii) electronic billing; or

1472 (iii) the electronic exchange of clinical health information permitted by Section
1473 26-1-37.

1474 Section 9. Section **31A-22-625** is amended to read:

1475 **31A-22-625. Catastrophic coverage of mental health conditions.**

1476 (1) As used in this section:

1477 (a) (i) "Catastrophic mental health coverage" means coverage in a health benefit plan
1478 that does not impose a lifetime limit, annual payment limit, episodic limit, inpatient or
1479 outpatient service limit, or maximum out-of-pocket limit that places a greater financial burden
1480 on an insured for the evaluation and treatment of a mental health condition than for the
1481 evaluation and treatment of a physical health condition.

1482 (ii) "Catastrophic mental health coverage" may include a restriction on cost sharing
1483 factors, such as deductibles, copayments, or coinsurance, before reaching a maximum
1484 out-of-pocket limit.

1485 (iii) "Catastrophic mental health coverage" may include one maximum out-of-pocket
1486 limit for physical health conditions and another maximum out-of-pocket limit for mental health
1487 conditions, except that if separate out-of-pocket limits are established, the out-of-pocket limit
1488 for mental health conditions may not exceed the out-of-pocket limit for physical health

1489 conditions.

1490 (b) (i) "50/50 mental health coverage" means coverage in a health benefit plan that
1491 pays for at least 50% of covered services for the diagnosis and treatment of mental health
1492 conditions.

1493 (ii) "50/50 mental health coverage" may include a restriction on:

1494 (A) episodic limits;

1495 (B) inpatient or outpatient service limits; or

1496 (C) maximum out-of-pocket limits.

1497 (c) "Large employer" is as defined in 42 U.S.C. Sec. 300gg-91.

1498 (d) (i) "Mental health condition" means a condition or disorder involving mental illness
1499 that falls under a diagnostic category listed in the Diagnostic and Statistical Manual, as
1500 periodically revised.

1501 (ii) "Mental health condition" does not include the following when diagnosed as the
1502 primary or substantial reason or need for treatment:

1503 (A) a marital or family problem;

1504 (B) a social, occupational, religious, or other social maladjustment;

1505 (C) a conduct disorder;

1506 (D) a chronic adjustment disorder;

1507 (E) a psychosexual disorder;

1508 (F) a chronic organic brain syndrome;

1509 (G) a personality disorder;

1510 (H) a specific developmental disorder or learning disability; or

1511 (I) mental retardation.

1512 (e) "Small employer" is as defined in 42 U.S.C. Sec. 300gg-91.

1513 (2) (a) At the time of purchase and renewal, an insurer shall offer to a small employer
1514 that it insures or seeks to insure a choice between catastrophic mental health coverage and
1515 50/50 mental health coverage.

1516 (b) In addition to complying with Subsection (2)(a), an insurer may offer to provide:

1517 (i) catastrophic mental health coverage, 50/50 mental health coverage, or both at levels
1518 that exceed the minimum requirements of this section; or

1519 (ii) coverage that excludes benefits for mental health conditions.

(c) A small employer may, at its option, choose either catastrophic mental health coverage, 50/50 mental health coverage, or coverage offered under Subsection (2)(b), regardless of the employer's previous coverage for mental health conditions.

(d) An insurer is exempt from the 30% index rating restriction in Section 31A-30-106.1 and, for the first year only that catastrophic mental health coverage is chosen, the 15% annual adjustment restriction in Section 31A-30-106.1, for any small employer with 20 or less enrolled employees who chooses coverage that meets or exceeds catastrophic mental health coverage.

(3) An insurer shall offer a large employer mental health and substance use disorder benefit in compliance with Section 2705 of the Public Health Service Act, 42 U.S.C. Sec. ~~300gg-5~~ 300gg-26, and federal regulations adopted pursuant to that act.

(4) (a) An insurer may provide catastrophic mental health coverage to a small employer through a managed care organization or system in a manner consistent with Chapter 8, Health Maintenance Organizations and Limited Health Plans, regardless of whether the insurance policy uses a managed care organization or system for the treatment of physical health conditions.

(b) (i) Notwithstanding any other provision of this title, an insurer may:

(A) establish a closed panel of providers for catastrophic mental health coverage; and

(B) refuse to provide a benefit to be paid for services rendered by a nonpanel provider unless:

(I) the insured is referred to a nonpanel provider with the prior authorization of the insurer; and

(II) the nonpanel provider agrees to follow the insurer's protocols and treatment guidelines.

(ii) If an insured receives services from a nonpanel provider in the manner permitted by Subsection (4)(b)(i)(B), the insurer shall reimburse the insured for not less than 75% of the average amount paid by the insurer for comparable services of panel providers under a noncapitated arrangement who are members of the same class of health care providers.

(iii) This Subsection (4)(b) may not be construed as requiring an insurer to authorize a referral to a nonpanel provider.

(c) To be eligible for catastrophic mental health coverage, a diagnosis or treatment of a

1551 mental health condition must be rendered:

1552 (i) by a mental health therapist as defined in Section 58-60-102; or

1553 (ii) in a health care facility:

1554 (A) licensed or otherwise authorized to provide mental health services pursuant to:

1555 (I) Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or

1556 (II) Title 62A, Chapter 2, Licensure of Programs and Facilities; and

1557 (B) that provides a program for the treatment of a mental health condition pursuant to a

1558 written plan.

1559 (5) The commissioner may prohibit an insurance policy that provides mental health

1560 coverage in a manner that is inconsistent with this section.

1561 (6) The commissioner shall:

1562 (a) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative

1563 Rulemaking Act, as necessary to ensure compliance with this section; and

1564 (b) provide general figures on the percentage of insurance policies that include:

1565 (i) no mental health coverage;

1566 (ii) 50/50 mental health coverage;

1567 (iii) catastrophic mental health coverage; and

1568 (iv) coverage that exceeds the minimum requirements of this section.

1569 (7) This section may not be construed as discouraging or otherwise preventing an

1570 insurer from providing mental health coverage in connection with an individual insurance

1571 policy.

1572 (8) This section shall be repealed in accordance with Section 63I-1-231.

1573 Section 10. Section **31A-22-701 (Effective 01/01/11)** is amended to read:

1574 **31A-22-701 (Effective 01/01/11). Groups eligible for group or blanket insurance.**

1575 (1) As used in this section, "association group" means a lawfully formed association of

1576 individuals or business entities that:

1577 (a) purchases insurance on a group basis on behalf of members; and

1578 (b) is formed and maintained in good faith for purposes other than obtaining insurance.

1579 (2) A group ~~[or blanket]~~ accident and health insurance policy may be issued to:

1580 (a) a group:

1581 (i) to which a group life insurance policy may be issued under Sections 31A-22-502,

1582 31A-22-503, 31A-22-504, 31A-22-506, 31A-22-507, and 31A-22-509; and
1583 (ii) that is formed [~~for a reason other than the purchase of insurance~~] and maintained in
1584 good faith for a purpose other than obtaining insurance;
1585 (b) an association group that:
1586 (i) has been actively in existence for at least five years;
1587 (ii) has a constitution and bylaws;
1588 (iii) is formed and maintained in good faith for purposes other than obtaining
1589 insurance;
1590 (iv) does not condition membership in the association group on any health
1591 status-related factor relating to an individual, including an employee of an employer or a
1592 dependent of an employee;
1593 (v) makes accident and health insurance coverage offered through the association
1594 group available to all members regardless of any health status-related factor relating to the
1595 members or individuals eligible for coverage through a member; [~~and~~]
1596 (vi) does not make accident and health insurance coverage offered through the
1597 association group available other than in connection with a member of the association group;
1598 [~~or~~] and
1599 (vii) is actuarially sound; or
1600 (c) a group specifically authorized by the commissioner under Section 31A-22-509,
1601 upon a finding that:
1602 (i) authorization is not contrary to the public interest;
1603 (ii) the [~~proposed~~] group is actuarially sound;
1604 (iii) formation of the proposed group may result in economies of scale in acquisition,
1605 administrative, marketing, and brokerage costs;
1606 (iv) the insurance policy, insurance certificate, or other indicia of coverage that will be
1607 offered to the proposed group is substantially equivalent to insurance policies that are
1608 otherwise available to similar groups;
1609 (v) the group would not present hazards of adverse selection; [~~and~~]
1610 (vi) the premiums for the insurance policy and any contributions by or on behalf of the
1611 insured persons are reasonable in relation to the benefits provided[-];
1612 (vii) the group is formed and maintained in good faith for a purpose other than

1613 obtaining insurance.

1614 (3) A blanket accident and health insurance policy;

1615 (a) covers a defined class of persons;

1616 (b) may not be offered or underwritten on an individual basis;

1617 (c) shall cover only a group that is actuarially sound;

1618 (d) may ~~also~~ be issued to:

1619 ~~(a)~~ (i) a common carrier or an operator, owner, or lessee of a means of transportation,
1620 as policyholder, covering persons who may become passengers as defined by reference to
1621 ~~their~~ the person's travel status;

1622 ~~(b)~~ (ii) an employer, as policyholder, covering any group of employees, dependents,
1623 or guests, as defined by reference to specified hazards incident to any activities of the
1624 policyholder;

1625 ~~(c)~~ (iii) an institution of learning, including a school district, a school jurisdictional
1626 ~~units~~ unit, or the head, principal, or governing board of ~~any of those units~~ a school
1627 jurisdictional unit, as policyholder, covering students, teachers, or employees;

1628 ~~(d)~~ (iv) a religious, charitable, recreational, educational, or civic organization, or
1629 branch of one of those organizations, as policyholder, covering ~~any~~ a group of members or
1630 participants as defined by reference to specified hazards incident to the activities sponsored or
1631 supervised by the policyholder;

1632 ~~(e)~~ (v) a sports team, camp, or sponsor of ~~the~~ a sports team or camp, as
1633 policyholder, covering members, campers, employees, officials, or supervisors;

1634 ~~(f)~~ (vi) a volunteer fire department, first aid, civil defense, or other similar volunteer
1635 organization, as policyholder, covering ~~any~~ a group of members or participants as defined by
1636 reference to specified hazards incident to activities sponsored, supervised, or participated in by
1637 the policyholder;

1638 ~~(g)~~ (vii) a newspaper or other publisher, as policyholder, covering its carriers;

1639 ~~(h)~~ (viii) an association, including a labor union, ~~which~~ that has a constitution and
1640 bylaws and ~~which has been~~ that is organized in good faith for purposes other than that of
1641 obtaining insurance, as policyholder, covering ~~any~~ a group of members or participants as
1642 defined by reference to specified hazards incident to the activities or operations sponsored or
1643 supervised by the policyholder; and

1644 ~~[(i) a health insurance purchasing association, as defined in Section 31A-34-103,~~
1645 ~~organized and controlled solely by participating employers; and]~~

1646 ~~[(j)]~~ (ix) any other class of risks that, in the judgment of the commissioner, may be
1647 properly eligible for blanket accident and health insurance.

1648 (4) The judgment of the commissioner may be exercised on the basis of:

1649 (a) individual risks;

1650 (b) a class of risks; or

1651 (c) both Subsections (4)(a) and (b).

1652 Section 11. Section **31A-22-716** is amended to read:

1653 **31A-22-716. Required provision for notice of termination.**

1654 (1) Every policy for group or blanket accident and health coverage issued or renewed
1655 after July 1, 1990, shall include a provision that obligates the policyholder to give 30 days prior
1656 written notice of termination to each employee or group member and to notify each employee
1657 or group member of his rights to continue coverage upon termination.

1658 (2) An insurer's monthly notice to the policyholder of premium payments due shall
1659 include a statement of the policyholder's obligations as set forth in Subsection (1). Insurers
1660 shall provide a sample notice to the policyholder at least once a year.

1661 (3) For the purpose of compliance with federal law and the Health Insurance Portability
1662 and Accountability Act~~[-P.L. No. 104-191, 110 Stat. 1960]~~, all health benefit plans, health
1663 insurers, and student health plans must provide a certificate of creditable coverage to each
1664 covered person upon the person's termination from the plan as soon as reasonably possible.

1665 Section 12. Section **31A-22-721** is amended to read:

1666 **31A-22-721. A health benefit plan for a plan sponsor -- Discontinuance and**
1667 **nonrenewal.**

1668 (1) Except as otherwise provided in this section, a health benefit plan for a plan
1669 sponsor is renewable and continues in force:

1670 (a) with respect to all eligible employees and dependents; and

1671 (b) at the option of the plan sponsor.

1672 (2) A health benefit plan for a plan sponsor may be discontinued or nonrenewed:

1673 (a) for a network plan, if:

1674 (i) there is no longer any enrollee under the group health plan who lives, resides, or

1675 works in:

1676 (A) the service area of the insurer; or

1677 (B) the area for which the insurer is authorized to do business; and

1678 (ii) in the case of the small employer market, the insurer applies the same criteria the

1679 insurer would apply in denying enrollment in the plan under Subsection 31A-30-108(7); or

1680 (b) for coverage made available in the small or large employer market only through an

1681 association, if:

1682 (i) the employer's membership in the association ceases; and

1683 (ii) the coverage is terminated uniformly without regard to any health status-related

1684 factor relating to any covered individual.

1685 (3) A health benefit plan for a plan sponsor may be discontinued if:

1686 (a) a condition described in Subsection (2) exists;

1687 (b) the plan sponsor fails to pay premiums or contributions in accordance with the

1688 terms of the contract;

1689 (c) the plan sponsor:

1690 (i) performs an act or practice that constitutes fraud; or

1691 (ii) makes an intentional misrepresentation of material fact under the terms of the

1692 coverage;

1693 (d) the insurer:

1694 (i) elects to discontinue offering a particular health benefit product delivered or issued

1695 for delivery in this state;

1696 (ii) (A) provides notice of the discontinuation in writing:

1697 (I) to each plan sponsor, employee, and dependent of a plan sponsor or employee; and

1698 (II) at least 90 days before the date the coverage will be discontinued;

1699 (B) provides notice of the discontinuation in writing:

1700 (I) to the commissioner; and

1701 (II) at least three working days prior to the date the notice is sent to the affected plan

1702 sponsors, employees, and dependents of plan sponsors or employees;

1703 (C) offers to each plan sponsor, on a guaranteed issue basis, the option to purchase any

1704 other health benefit products currently being offered:

1705 (I) by the insurer in the market; or

1706 (II) in the case of a large employer, any other health benefit plan currently being
1707 offered in that market; and

1708 (D) in exercising the option to discontinue that product and in offering the option of
1709 coverage in this section, the insurer acts uniformly without regard to:

1710 (I) the claims experience of a plan sponsor;

1711 (II) any health status-related factor relating to any covered participant or beneficiary; or

1712 (III) any health status-related factor relating to a new participant or beneficiary who
1713 may become eligible for coverage; or

1714 (e) the insurer:

1715 (i) elects to discontinue all of the insurer's health benefit plans:

1716 (A) in the small employer market; or

1717 (B) the large employer market; or

1718 (C) both the small and large employer markets; and

1719 (ii) (A) provides notice of the discontinuance in writing:

1720 (I) to each plan sponsor, employee, or dependent of a plan sponsor or an employee; and

1721 (II) at least 180 days before the date the coverage will be discontinued;

1722 (B) provides notice of the discontinuation in writing:

1723 (I) to the commissioner in each state in which an affected insured individual is known
1724 to reside; and

1725 (II) at least 30 business days prior to the date the notice is sent to the affected plan
1726 sponsors, employees, and dependents of a plan sponsor or employee;

1727 (C) discontinues and nonrenews all plans issued or delivered for issuance in the
1728 market; and

1729 (D) provides a plan of orderly withdrawal as required by Section 31A-4-115.

1730 (4) A large employer health benefit plan may be discontinued or nonrenewed:

1731 (a) if a condition described in Subsection (2) exists; or

1732 (b) for noncompliance with the insurer's:

1733 (i) minimum participation requirements; or

1734 (ii) employer contribution requirements.

1735 (5) A small employer health benefit plan may be discontinued or nonrenewed:

1736 (a) if a condition described in Subsection (2) exists; or

- 1737 (b) for noncompliance with the insurer's employer contribution requirements.
- 1738 (6) A small employer health benefit plan may be nonrenewed:
- 1739 (a) if a condition described in Subsection (2) exists; or
- 1740 (b) for noncompliance with the insurer's minimum participation requirements.
- 1741 (7) (a) Except as provided in Subsection (7)(d), an eligible employee may be
- 1742 discontinued if after issuance of coverage the eligible employee:
- 1743 (i) engages in an act or practice that constitutes fraud in connection with the coverage;
- 1744 or
- 1745 (ii) makes an intentional misrepresentation of material fact in connection with the
- 1746 coverage.
- 1747 (b) An eligible employee that is discontinued under Subsection (7)(a) may reenroll:
- 1748 (i) 12 months after the date of discontinuance; and
- 1749 (ii) if the plan sponsor's coverage is in effect at the time the eligible employee applies
- 1750 to reenroll.
- 1751 (c) At the time the eligible employee's coverage is discontinued under Subsection
- 1752 (7)(a), the insurer shall notify the eligible employee of the right to reenroll when coverage is
- 1753 discontinued.
- 1754 (d) An eligible employee may not be discontinued under this Subsection (7) because of
- 1755 a fraud or misrepresentation that relates to health status.
- 1756 (8) (a) Except as provided in Subsection (8)(b), an insurer that elects to discontinue
- 1757 offering a health benefit plan under Subsection (3)(e) shall be prohibited from writing new
- 1758 business in such market in this state for a period of five years beginning on the date of
- 1759 discontinuation of the last coverage that is discontinued.
- 1760 (b) The commissioner may waive the prohibition under Subsection (8)(a) when the
- 1761 commissioner finds that waiver is in the public interest:
- 1762 (i) to promote competition; or
- 1763 (ii) to resolve inequity in the marketplace.
- 1764 (9) If an insurer is doing business in one established geographic service area of the
- 1765 state, this section applies only to the insurer's operations in that geographic service area.
- 1766 (10) An insurer may modify a health benefit plan for a plan sponsor only:
- 1767 (a) at the time of coverage renewal; and

(b) if the modification is effective uniformly among all plans with a particular product or service.

(11) For purposes of this section, a reference to "plan sponsor" includes a reference to the employer:

(a) with respect to coverage provided to an employer member of the association; and

(b) if the health benefit plan is made available by an insurer in the employer market only through:

(i) an association;

(ii) a trust; or

(iii) a discretionary group.

(12) (a) A small employer that, after purchasing a health benefit plan in the small group market, employs on average more than 50 eligible employees on each business day in a calendar year may continue to renew the health benefit plan purchased in the small group market.

(b) A large employer that, after purchasing a health benefit plan in the large group market, employs on average less than 51 eligible employees on each business day in a calendar year may continue to renew the health benefit plan purchased in the large group market.

(13) An insurer offering employer sponsored health benefit plans shall comply with the Health Insurance Portability and Accountability Act, [~~P.L. 104-191, 110 Stat. 1962, Sec. 2701 and 2702~~] 42 U.S.C. Sec. 300gg and 300gg-1.

Section 13. Section **31A-22-723** is amended to read:

31A-22-723. Group and blanket conversion coverage.

(1) Notwithstanding Subsection 31A-1-103(3)(f), and except as provided in Subsection (3), ~~[all policies]~~ a policy of accident and health insurance offered on a group basis under this title, or Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act, shall provide that a person whose insurance under the group policy has been terminated is entitled to choose a converted individual policy in accordance with this section and Section 31A-22-724.

(2) A person who has lost group coverage may elect conversion coverage with the insurer that provided prior group coverage if the person:

(a) has been continuously covered for a period of three months by the group policy or the group's preceding policies immediately prior to termination;

- 1799 (b) has exhausted either:
- 1800 (i) Utah mini-COBRA coverage as required in Section 31A-22-722;
- 1801 (ii) federal COBRA coverage; or
- 1802 (iii) alternative coverage under Section 31A-22-724;
- 1803 (c) has not acquired or is not covered under any other group coverage that covers [att]
- 1804 preexisting conditions, including maternity, if the coverage exists; and
- 1805 (d) resides in the insurer's service area.
- 1806 (3) This section does not apply if the person's prior group coverage:
- 1807 (a) is a stand alone policy that only provides one of the following:
- 1808 (i) catastrophic benefits;
- 1809 (ii) aggregate stop loss benefits;
- 1810 (iii) specific stop loss benefits;
- 1811 (iv) benefits for specific diseases;
- 1812 (v) accidental injuries only;
- 1813 (vi) dental; or
- 1814 (vii) vision;
- 1815 (b) is an income replacement policy;
- 1816 (c) was terminated because the insured:
- 1817 (i) failed to pay any required individual contribution;
- 1818 (ii) performed an act or practice that constitutes fraud in connection with the coverage;
- 1819 or
- 1820 (iii) made intentional misrepresentation of material fact under the terms of coverage; or
- 1821 (d) was terminated pursuant to Subsection 31A-8-402.3(2)(a), 31A-22-721(2)(a), or
- 1822 31A-30-107(2)(a).
- 1823 (4) (a) ~~[The employer shall]~~ An accident and health insurance policy offered on a group
- 1824 basis shall require the policyholder to provide written notification of the right to an individual
- 1825 conversion policy within 30 days of the insured's termination of coverage to:
- 1826 (i) the terminated insured;
- 1827 (ii) the ex-spouse; or
- 1828 (iii) in the case of the death of the insured:
- 1829 (A) the surviving spouse; and

1830 (B) the guardian of any dependents, if different from a surviving spouse.

1831 (b) The notification required by Subsection (4)(a) shall:

1832 (i) be sent by first class mail;

1833 (ii) contain the name, address, and telephone number of the insurer that will provide

1834 the conversion coverage; and

1835 (iii) be sent to the insured's last-known address as shown on the records of the

1836 employer of:

1837 (A) the insured;

1838 (B) the ex-spouse; and

1839 (C) if the policy terminates by reason of the death of the insured to:

1840 (I) the surviving spouse; and

1841 (II) the guardian of any dependents, if different from a surviving spouse.

1842 (5) (a) An insurer is not required to issue a converted policy ~~[which]~~ that provides

1843 benefits in excess of those provided under the group policy from which conversion is made.

1844 (b) Except as provided in Subsection (5)(c), if the conversion is made from a health

1845 benefit plan, the employee or member shall be offered~~[(i) at least the basic benefit plan as~~

1846 ~~provided in Section 31A-22-613.5 through December 31, 2009; and (ii) beginning January 1,~~

1847 ~~2010, only]~~ the alternative coverage as provided in Subsection 31A-22-724(1)(a).

1848 (c) If the benefit levels required under Subsection (5)(b) exceed the benefit levels

1849 provided under the group policy, the conversion policy may offer benefits ~~[which]~~ that are

1850 substantially similar to those provided under the group policy.

1851 (6) Written application for ~~[the]~~ a converted policy shall be made and the first premium

1852 paid to the insurer no later than 60 days after termination of the group accident and health

1853 insurance.

1854 (7) ~~[The]~~ A converted policy shall be issued without evidence of insurability.

1855 (8) (a) The initial premium for the converted policy for the first 12 months and

1856 subsequent renewal premiums shall be determined in accordance with premium rates

1857 applicable to age, class of risk of the person, and the type and amount of insurance provided.

1858 (b) The initial premium for the first 12 months may not be raised based on pregnancy

1859 of a covered insured.

1860 (c) The premium for converted policies shall be payable monthly or quarterly as

1861 required by the insurer for the policy form and plan selected, unless another mode or premium
1862 payment is mutually agreed upon.

1863 (9) ~~The~~ A converted policy becomes effective at the time the insurance under the
1864 group policy terminates.

1865 (10) (a) A newly issued converted policy covers the employee or the member and must
1866 also cover ~~all~~ dependents covered by the group policy at the date of termination of the group
1867 coverage.

1868 (b) The only dependents that may be added after the policy has been issued are children
1869 and dependents as required by Section 31A-22-610 and Subsections 31A-22-610.5(6) and (7).

1870 (c) At the option of the insurer, a separate converted policy may be issued to cover
1871 ~~any~~ a dependent.

1872 (11) (a) To the extent ~~the~~ a group policy provided maternity benefits, ~~the~~ a
1873 conversion policy shall provide maternity benefits equal to the lesser of the maternity benefits
1874 of the group policy or the conversion policy until termination of a pregnancy that exists on the
1875 date of conversion if one of the following is pregnant on the date of the conversion:

- 1876 (i) the insured;
1877 (ii) a spouse of the insured; or
1878 (iii) a dependent of the insured.

1879 (b) ~~The requirements of this~~ This Subsection (11) ~~do~~ does not apply to a pregnancy
1880 that occurs after the date of conversion.

1881 (12) Except as provided in this Subsection (12), a converted policy is renewable with
1882 respect to ~~all individuals or dependents~~ an individual or dependent at the option of the
1883 insured. An insured may be terminated from a converted policy for the following reasons:

- 1884 (a) a dependent is no longer eligible under the converted policy;
1885 (b) for a network plan, if the individual no longer lives, resides, or works in:
1886 (i) the insured's service area; or
1887 (ii) the area for which the covered carrier is authorized to do business;
1888 (c) the individual fails to pay premiums or contributions in accordance with the terms
1889 of the converted policy, including any timeliness requirements;
1890 (d) the individual performs an act or practice that constitutes fraud in connection with
1891 the coverage;

(e) the individual makes an intentional misrepresentation of material fact under the terms of the coverage; or

(f) coverage is terminated uniformly without regard to any health status-related factor relating to any covered individual.

(13) Conditions pertaining to health may not be used as a basis for classification under this section.

(14) An insurer is only required to offer a conversion policy that complies with Subsection 31A-22-724(1)(b) and, notwithstanding Sections 31A-8-402.5 and 31A-30-107.1, may discontinue any other conversion policy if:

(a) the discontinued conversion policy is discontinued uniformly without regard to ~~any~~ a health related factor;

(b) ~~any affected~~ an affected individual is provided with 90 days' advanced written notice of the discontinuation of the existing conversion policy;

(c) the ~~policy holder~~ policyholder is offered the insurer's conversion policy that complies with Subsection 31A-22-724(1)(b); and

(d) the ~~policy holder~~ policyholder is not re-rated for purposes of premium calculation.

(15) This section does not apply to a blanket accident and health policy issued under Section 31A-22-701.

Section 14. Section **31A-23a-102** is amended to read:

31A-23a-102. Definitions.

As used in this chapter:

(1) "Bail bond producer" means a person who:

(a) is appointed by:

(i) a surety insurer that issues bail bonds; or

(ii) a bail bond surety company licensed under Chapter 35, Bail Bond Act;

(b) is designated to execute or countersign undertakings of bail in connection with a judicial proceeding; and

(c) receives or is promised money or other things of value for engaging in an act described in Subsection (1)(b).

(2) "Escrow" means a license subline of authority in conjunction with the title insurance line of authority that allows a person to conduct escrow as defined in Section

- 1923 31A-1-301.
- 1924 (3) "Home state" means a state or territory of the United States or the District of
- 1925 Columbia in which an insurance producer:
- 1926 (a) maintains the insurance producer's principal:
- 1927 (i) place of residence; or
- 1928 (ii) place of business; and
- 1929 (b) is licensed to act as an insurance producer.
- 1930 (4) "Insurer" is as defined in Section 31A-1-301, except that the following persons or
- 1931 similar persons are not insurers for purposes of Part 7, Producer Controlled Insurers:
- 1932 (a) a risk retention group as defined in:
- 1933 (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;
- 1934 (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and
- 1935 (iii) Chapter 15, Part 2, Risk Retention Groups Act;
- 1936 (b) a residual market pool;
- 1937 (c) a joint underwriting authority or association; and
- 1938 (d) a captive insurer.
- 1939 (5) "License" is defined in Section 31A-1-301.
- 1940 (6) (a) "Managing general agent" means a person that:
- 1941 (i) manages all or part of the insurance business of an insurer, including the
- 1942 management of a separate division, department, or underwriting office;
- 1943 (ii) acts as an agent for the insurer whether it is known as a managing general agent,
- 1944 manager, or other similar term;
- 1945 (iii) produces and underwrites an amount of gross direct written premium equal to, or
- 1946 more than 5% of, the policyholder surplus as reported in the last annual statement of the insurer
- 1947 in any one quarter or year:
- 1948 (A) with or without the authority;
- 1949 (B) separately or together with an affiliate; and
- 1950 (C) directly or indirectly; and
- 1951 (iv) (A) adjusts or pays claims in excess of an amount determined by the
- 1952 commissioner; or
- 1953 (B) negotiates reinsurance on behalf of the insurer.

1954 (b) Notwithstanding Subsection (6)(a), the following persons may not be considered as
1955 managing general agent for the purposes of this chapter:

- 1956 (i) an employee of the insurer;
- 1957 (ii) a United States manager of the United States branch of an alien insurer;
- 1958 (iii) an underwriting manager that, pursuant to contract:
- 1959 (A) manages all the insurance operations of the insurer;
- 1960 (B) is under common control with the insurer;
- 1961 (C) is subject to Chapter 16, Insurance Holding Companies; and
- 1962 (D) is not compensated based on the volume of premiums written; and
- 1963 (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal
1964 insurer or inter-insurance exchange under powers of attorney.

1965 (7) "Negotiate" means the act of conferring directly with or offering advice directly to a
1966 purchaser or prospective purchaser of a particular contract of insurance concerning a
1967 substantive benefit, term, or condition of the contract if the person engaged in that act:

- 1968 (a) sells insurance; or
- 1969 (b) obtains insurance from insurers for purchasers.

1970 (8) "Reinsurance intermediary" means:

- 1971 (a) a reinsurance intermediary-broker; or
- 1972 (b) a reinsurance intermediary-manager.

1973 (9) "Reinsurance intermediary-broker" means a person other than an officer or
1974 employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or
1975 places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority
1976 or power to bind reinsurance on behalf of the insurer.

1977 (10) (a) "Reinsurance intermediary-manager" means a person who:

- 1978 (i) has authority to bind or who manages all or part of the assumed reinsurance
1979 business of a reinsurer, including the management of a separate division, department, or
1980 underwriting office; and

1981 (ii) acts as an agent for the reinsurer whether the person is known as a reinsurance
1982 intermediary-manager, manager, or other similar term.

1983 (b) Notwithstanding Subsection (10)(a), the following persons may not be considered
1984 reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

- 1985 (i) an employee of the reinsurer;
- 1986 (ii) a United States manager of the United States branch of an alien reinsurer;
- 1987 (iii) an underwriting manager that, pursuant to contract:
- 1988 (A) manages all the reinsurance operations of the reinsurer;
- 1989 (B) is under common control with the reinsurer;
- 1990 (C) is subject to Chapter 16, Insurance Holding Companies; and
- 1991 (D) is not compensated based on the volume of premiums written; and
- 1992 (iv) the manager of a group, association, pool, or organization of insurers that:
- 1993 (A) engage in joint underwriting or joint reinsurance; and
- 1994 (B) are subject to examination by the insurance commissioner of the state in which the
- 1995 manager's principal business office is located.
- 1996 (11) "Search" means a license subline of authority in conjunction with the title
- 1997 insurance line of authority that allows a person to issue title insurance commitments or policies
- 1998 on behalf of a title insurer.
- 1999 (12) "Sell" means to exchange a contract of insurance:
- 2000 (a) by any means;
- 2001 (b) for money or its equivalent; and
- 2002 (c) on behalf of an insurance company.
- 2003 (13) "Solicit" means:
- 2004 (a) attempting to sell insurance;
- 2005 (b) asking or urging a person to apply for:
- 2006 (i) a particular kind of insurance; and
- 2007 (ii) insurance from a particular insurance company;
- 2008 (c) advertising insurance, including advertising for the purpose of obtaining leads for
- 2009 the sale of insurance; or
- 2010 (d) holding oneself out as being in the insurance business.
- 2011 (14) "Terminate" means:
- 2012 (a) the cancellation of the relationship between:
- 2013 (i) an individual licensee or agency licensee and a particular insurer; or
- 2014 (ii) an individual licensee and a particular agency licensee; or
- 2015 (b) the termination of:

(i) an individual licensee's or agency licensee's authority to transact insurance on behalf of a particular insurance company; or

(ii) an individual licensee's authority to transact insurance on behalf of a particular agency licensee.

(15) "Title marketing representative" means a person who:

(a) represents a title insurer in soliciting, requesting, or negotiating the placing of:

(i) title insurance; or

(ii) escrow services; and

(b) does not have a search or escrow license as provided in Section 31A-23a-106.

(16) "Uniform application" means the version of the National Association of Insurance ~~Commissioner's~~ Commissioners' uniform application for resident and nonresident producer licensing at the time the application is filed.

(17) "Uniform business entity application" means the version of the National Association of Insurance ~~Commissioner's~~ Commissioners' uniform business entity application for resident and nonresident business entities at the time the application is filed.

Section 15. Section **31A-23a-106** is amended to read:

31A-23a-106. License types.

(1) (a) A resident or nonresident license issued under this chapter shall be issued under the license types described under Subsection (2).

(b) A license type and a line of authority pertaining to a license type describe the type of licensee and the lines of business that a licensee may sell, solicit, or negotiate. A license type is intended to describe the matters to be considered under any education, examination, and training required of a license applicant under Sections 31A-23a-108, 31A-23a-202, and 31A-23a-203.

(2) (a) A producer license type includes the following lines of authority:

(i) life insurance, including a nonvariable contract;

(ii) variable contracts, including variable life and annuity, if the producer has the life insurance line of authority;

(iii) accident and health insurance, including a contract issued to a policyholder under Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance Organizations and Limited Health Plans;

2047 (iv) property insurance;

2048 (v) casualty insurance, including a surety or other bond;

2049 (vi) title insurance under one or more of the following categories:

2050 (A) search, including authority to act as a title marketing representative;

2051 (B) escrow, including authority to act as a title marketing representative; and

2052 (C) title marketing representative only;

2053 (vii) personal lines insurance; and

2054 (viii) surplus lines, if the producer has the property or casualty or both lines of

2055 authority.

2056 (b) A limited line producer license type includes the following limited lines of

2057 authority:

2058 (i) limited line credit insurance;

2059 (ii) travel insurance;

2060 (iii) motor club insurance;

2061 (iv) car rental related insurance;

2062 (v) legal expense insurance;

2063 (vi) crop insurance;

2064 (vii) self-service storage insurance; ~~and~~

2065 (viii) bail bond producer[-]; and

2066 (ix) guaranteed asset protection waiver.

2067 (c) A customer service representative license type includes the following lines of

2068 authority, if held by the customer service representative's employer producer:

2069 (i) life insurance, including a nonvariable contract;

2070 (ii) accident and health insurance, including a contract issued to a policyholder under

2071 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance

2072 Organizations and Limited Health Plans;

2073 (iii) property insurance;

2074 (iv) casualty insurance, including a surety or other bond;

2075 (v) personal lines insurance; and

2076 (vi) surplus lines, if the employer producer has the property or casualty or both lines of

2077 authority.

- 2078 (d) A consultant license type includes the following lines of authority:
- 2079 (i) life insurance, including a nonvariable contract;
- 2080 (ii) variable contracts, including variable life and annuity, if the consultant has the life
- 2081 insurance line of authority;
- 2082 (iii) accident and health insurance, including a contract issued to a policyholder under
- 2083 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
- 2084 Organizations and Limited Health Plans;
- 2085 (iv) property insurance;
- 2086 (v) casualty insurance, including a surety or other bond; and
- 2087 (vi) personal lines insurance.
- 2088 (e) A managing general agent license type includes the following lines of authority:
- 2089 (i) life insurance, including a nonvariable contract;
- 2090 (ii) variable contracts, including variable life and annuity, if the managing general
- 2091 agent has the life insurance line of authority;
- 2092 (iii) accident and health insurance, including a contract issued to a policyholder under
- 2093 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
- 2094 Organizations and Limited Health Plans;
- 2095 (iv) property insurance;
- 2096 (v) casualty insurance, including a surety or other bond; and
- 2097 (vi) personal lines insurance.
- 2098 (f) A reinsurance intermediary license type includes the following lines of authority:
- 2099 (i) life insurance, including a nonvariable contract;
- 2100 (ii) variable contracts, including variable life and annuity, if the reinsurance
- 2101 intermediary has the life insurance line of authority;
- 2102 (iii) accident and health insurance, including a contract issued to a policyholder under
- 2103 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
- 2104 Organizations and Limited Health Plans;
- 2105 (iv) property insurance;
- 2106 (v) casualty insurance, including a surety or other bond; and
- 2107 (vi) personal lines insurance.
- 2108 (g) A ~~[holder of licenses]~~ person who holds a license under ~~[Subsections]~~ Subsection

2109 (2)(a), (d), (e), ~~[and]~~ or (f) has ~~[att]~~ the qualifications necessary to act as a holder of a license
2110 under Subsections (2)(b) and (c), except that the person may not act under Subsection
2111 (2)(b)(viii) or (ix).

2112 (3) (a) The commissioner may by rule recognize other producer, limited line producer,
2113 customer service representative, consultant, managing general agent, or reinsurance
2114 intermediary lines of authority as to kinds of insurance not listed under Subsections (2)(a)
2115 through (f).

2116 (b) Notwithstanding Subsection (3)(a), for purposes of title insurance the Title and
2117 Escrow Commission may by rule, with the concurrence of the commissioner and subject to
2118 Section 31A-2-404, recognize other categories for a title insurance producer line of authority
2119 not listed under Subsection (2)(a)(vi).

2120 (4) The variable contracts, including variable life and annuity line of authority requires:

2121 (a) licensure as a registered agent or broker by the ~~[National Association of Securities~~
2122 ~~Dealers]~~ Financial Industry Regulatory Authority; and

2123 (b) current registration with a securities broker-dealer.

2124 (5) A surplus lines producer is a producer who has a surplus lines line of authority.

2125 Section 16. Section **31A-23a-111** is amended to read:

2126 **31A-23a-111. Revocation, suspension, surrender, lapsing, limiting, or otherwise**
2127 **terminating a license -- Rulemaking for renewal or reinstatement.**

2128 (1) A license type issued under this chapter remains in force until:

2129 (a) revoked or suspended under Subsection (5);

2130 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
2131 administrative action;

2132 (c) the licensee dies or is adjudicated incompetent as defined under:

2133 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

2134 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
2135 Minors;

2136 (d) lapsed under Section 31A-23a-113; or

2137 (e) voluntarily surrendered.

2138 (2) The following may be reinstated within one year after the day on which the license
2139 is no longer in force:

2140 (a) a lapsed license; or
2141 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
2142 not be reinstated after the license period in which the license is voluntarily surrendered.

2143 (3) Unless otherwise stated in ~~the~~ a written agreement for the voluntary surrender of a
2144 license, submission and acceptance of a voluntary surrender of a license does not prevent the
2145 department from pursuing additional disciplinary or other action authorized under:

2146 (a) this title; or
2147 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
2148 Administrative Rulemaking Act.

2149 (4) A line of authority issued under this chapter remains in force until:

2150 (a) the qualifications pertaining to a line of authority are no longer met by the licensee;
2151 or
2152 (b) the supporting license type:

2153 (i) is revoked or suspended under Subsection (5);
2154 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of
2155 administrative action;

2156 (iii) the licensee dies or is adjudicated incompetent as defined under:

2157 (A) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
2158 (B) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
2159 Minors;

2160 (iv) lapsed under Section 31A-23a-113; or
2161 (v) voluntarily surrendered.

2162 (5) (a) If the commissioner makes a finding under Subsection (5)(b), as part of an
2163 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
2164 commissioner may:

2165 (i) revoke:

2166 (A) a license; or
2167 (B) a line of authority;

2168 (ii) suspend for a specified period of 12 months or less:

2169 (A) a license; or
2170 (B) a line of authority;

- 2171 (iii) limit in whole or in part:
- 2172 (A) a license; or
- 2173 (B) a line of authority; or
- 2174 (iv) deny a license application.
- 2175 (b) The commissioner may take an action described in Subsection (5)(a) if the
- 2176 commissioner finds that the licensee:
- 2177 (i) is unqualified for a license or line of authority under Section 31A-23a-104,
- 2178 31A-23a-105, or 31A-23a-107;
- 2179 (ii) violates:
- 2180 (A) an insurance statute;
- 2181 (B) a rule that is valid under Subsection 31A-2-201(3); or
- 2182 (C) an order that is valid under Subsection 31A-2-201(4);
- 2183 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
- 2184 delinquency proceedings in any state;
- 2185 (iv) fails to pay a final judgment rendered against the person in this state within 60
- 2186 days after the day on which the judgment became final;
- 2187 (v) fails to meet the same good faith obligations in claims settlement that is required of
- 2188 admitted insurers;
- 2189 (vi) is affiliated with and under the same general management or interlocking
- 2190 directorate or ownership as another insurance producer that transacts business in this state
- 2191 without a license;
- 2192 (vii) refuses:
- 2193 (A) to be examined; or
- 2194 (B) to produce its accounts, records, and files for examination;
- 2195 (viii) has an officer who refuses to:
- 2196 (A) give information with respect to the insurance producer's affairs; or
- 2197 (B) perform any other legal obligation as to an examination;
- 2198 (ix) provides information in the license application that is:
- 2199 (A) incorrect;
- 2200 (B) misleading;
- 2201 (C) incomplete; or

2202 (D) materially untrue;
2203 (x) violates an insurance law, valid rule, or valid order of another state's insurance
2204 department;
2205 (xi) obtains or attempts to obtain a license through misrepresentation or fraud;
2206 (xii) improperly withholds, misappropriates, or converts money or properties received
2207 in the course of doing insurance business;
2208 (xiii) intentionally misrepresents the terms of an actual or proposed:
2209 (A) insurance contract;
2210 (B) application for insurance; or
2211 (C) life settlement;
2212 (xiv) is convicted of a felony;
2213 (xv) admits or is found to have committed an insurance unfair trade practice or fraud;
2214 (xvi) in the conduct of business in this state or elsewhere:
2215 (A) uses fraudulent, coercive, or dishonest practices; or
2216 (B) demonstrates incompetence, untrustworthiness, or financial irresponsibility;
2217 (xvii) has an insurance license, or its equivalent, denied, suspended, or revoked in
2218 another state, province, district, or territory;
2219 (xviii) forges another's name to:
2220 (A) an application for insurance; or
2221 (B) a document related to an insurance transaction;
2222 (xix) improperly uses notes or another reference material to complete an examination
2223 for an insurance license;
2224 (xx) knowingly accepts insurance business from an individual who is not licensed;
2225 (xxi) fails to comply with an administrative or court order imposing a child support
2226 obligation;
2227 (xxii) fails to:
2228 (A) pay state income tax; or
2229 (B) comply with an administrative or court order directing payment of state income
2230 tax;
2231 (xxiii) violates or permits others to violate the federal Violent Crime Control and Law
2232 Enforcement Act of 1994, 18 U.S.C. [~~Secs.~~] Sec. 1033 and 1034; or

(xxiv) engages in a method or practice in the conduct of business that endangers the legitimate interests of customers and the public.

(c) For purposes of this section, if a license is held by an agency, both the agency itself and any individual designated under the license are considered to be the holders of the license.

(d) If an individual designated under the agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the individual's license, the commissioner may suspend, revoke, or limit the license of:

(i) the individual;

(ii) the agency, if the agency:

(A) is reckless or negligent in its supervision of the individual; or

(B) knowingly participates in the act or failure to act that is the ground for suspending, revoking, or limiting the license; or

(iii) (A) the individual; and

(B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

(6) A licensee under this chapter is subject to the penalties for acting as a licensee without a license if:

(a) the licensee's license is:

(i) revoked;

(ii) suspended;

(iii) limited;

(iv) surrendered in lieu of administrative action;

(v) lapsed; or

(vi) voluntarily surrendered; and

(b) the licensee:

(i) continues to act as a licensee; or

(ii) violates the terms of the license limitation.

(7) A licensee under this chapter shall immediately report to the commissioner:

(a) a revocation, suspension, or limitation of the person's license in another state, the District of Columbia, or a territory of the United States;

(b) the imposition of a disciplinary sanction imposed on that person by another state, the District of Columbia, or a territory of the United States; or

2264 (c) a judgment or injunction entered against that person on the basis of conduct
2265 involving:

2266 (i) fraud;

2267 (ii) deceit;

2268 (iii) misrepresentation; or

2269 (iv) a violation of an insurance law or rule.

2270 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a
2271 license in lieu of administrative action may specify a time, not to exceed five years, within
2272 which the former licensee may not apply for a new license.

2273 (b) If no time is specified in an order or agreement described in Subsection (8)(a), the
2274 former licensee may not apply for a new license for five years from the day on which the order
2275 or agreement is made without the express approval by the commissioner.

2276 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
2277 a license issued under this part if so ordered by a court.

2278 (10) The commissioner shall by rule prescribe the license renewal and reinstatement
2279 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2280 Section 17. Section **31A-23a-202** is amended to read:

2281 **31A-23a-202. Continuing education requirements.**

2282 (1) Pursuant to this section, the commissioner shall by rule prescribe the continuing
2283 education requirements for a producer and a consultant.

2284 (2) (a) The commissioner may not state a continuing education requirement in terms of
2285 formal education.

2286 (b) The commissioner may state a continuing education requirement in terms of
2287 ~~[classroom hours, or their equivalent,]~~ hours of insurance-related instruction received.

2288 (c) Insurance-related formal education may be a substitute, in whole or in part, for
2289 ~~[classroom hours, or their equivalent,]~~ the hours required under Subsection (2)(b).

2290 (3) (a) The commissioner shall impose continuing education requirements in
2291 accordance with a two-year licensing period in which the licensee meets the requirements of
2292 this Subsection (3).

2293 (b) (i) Except as provided in this section, the continuing education requirements shall
2294 require:

2295 (A) that a licensee complete 24 credit hours of continuing education for every two-year
2296 licensing period; and

2297 (B) that 3 of the 24 credit hours described in Subsection (3)(b)(i)(A) be ethics courses;
2298 [and].

2299 ~~[(C) that the licensee complete at least half of the required hours through classroom~~
2300 ~~hours of insurance-related instruction.]~~

2301 (ii) ~~[The hours not completed through classroom hours]~~ An hour of continuing
2302 education in accordance with Subsection (3)(b)(i)~~[(C)]~~ may be obtained through:

2303 (A) classroom attendance;

2304 ~~[(A)]~~ (B) home study;

2305 ~~[(B)]~~ (C) watching a video recording;

2306 ~~[(C)]~~ (D) experience credit; or

2307 ~~[(D)]~~ (E) another method provided by rule.

2308 (iii) (A) Notwithstanding ~~[Subsections]~~ Subsection (3)(b)(i)~~[(A) and (B)]~~, a title
2309 insurance producer is required to complete 12 credit hours of continuing education for every
2310 two-year licensing period, with 3 of the credit hours being ethics courses unless the title
2311 insurance producer is licensed in this state as a title insurance producer for 20 or more
2312 consecutive years.

2313 (B) If a title insurance producer is licensed in this state as a title insurance producer for
2314 20 or more consecutive years, the title insurance producer is required to complete 6 credit hours
2315 of continuing education for every two-year licensing period, with 3 of the credit hours being
2316 ethics courses.

2317 (C) Notwithstanding Subsection (3)(b)(iii)(A) or (B), a title insurance producer is
2318 considered to have met the continuing education requirements imposed under Subsection
2319 (3)(b)(iii)(A) or (B) if the title insurance producer:

2320 (I) is an active member in good standing with the Utah State Bar;

2321 (II) is in compliance with the continuing education requirements of the Utah State Bar;
2322 and

2323 (III) if requested by the department, provides the department evidence that the title
2324 insurance producer complied with the continuing education requirements of the Utah State Bar.

2325 (c) A licensee may obtain continuing education hours at any time during the two-year

2326 licensing period.

2327 (d) (i) A licensee is exempt from continuing education requirements under this section
2328 if:

2329 (A) the licensee was first licensed before April 1, 1978;

2330 (B) the license does not have a continuous lapse for a period of more than one year,

2331 except for a license for which the licensee has had an exemption approved before May 11,

2332 2011;

2333 [~~(B)~~] (C) the licensee requests an exemption from the department; and

2334 [~~(C)~~] (D) the department approves the exemption.

2335 (ii) If the department approves the exemption under Subsection (3)(d)(i), the licensee is
2336 not required to apply again for the exemption.

2337 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2338 commissioner shall, by rule:

2339 (i) publish a list of insurance professional designations whose continuing education
2340 requirements can be used to meet the requirements for continuing education under Subsection
2341 (3)(b);

2342 (ii) authorize a continuing education provider or a state or national professional
2343 producer or consultant association to:

2344 (A) offer a qualified program for a license type or line of authority on a geographically
2345 accessible basis; and

2346 (B) collect a reasonable fee for funding and administration of a continuing education
2347 program, subject to the review and approval of the commissioner; and

2348 (iii) provide that membership by a producer or consultant in a state or national
2349 professional producer or consultant association is considered a substitute for the equivalent of
2350 two hours for each year during which the producer or consultant is a member of the
2351 professional association, except that the commissioner may not give more than two hours of
2352 continuing education credit in a year regardless of the number of professional associations of
2353 which the producer or consultant is a member.

2354 (f) A fee permitted under Subsection (3)(e)(ii)(B) that is charged for attendance at a
2355 professional producer or consultant association program may be less for an association
2356 member, on the basis of the member's affiliation expense, but shall preserve the right of a

2357 nonmember to attend without affiliation.

2358 (4) The commissioner shall approve a continuing education provider or continuing
2359 education course that satisfies the requirements of this section.

2360 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2361 commissioner shall by rule set the processes and procedures for continuing education provider
2362 registration and course approval.

2363 (6) The requirements of this section apply only to a producer or consultant who is an
2364 individual.

2365 (7) A nonresident producer or consultant is considered to have satisfied this state's
2366 continuing education requirements if the nonresident producer or consultant satisfies the
2367 nonresident producer's or consultant's home state's continuing education requirements for a
2368 licensed insurance producer or consultant.

2369 (8) A producer or consultant subject to this section shall keep documentation of
2370 completing the continuing education requirements of this section for two years after the end of
2371 the two-year licensing period to which the continuing education applies.

2372 Section 18. Section **31A-23a-203** is amended to read:

2373 **31A-23a-203. Training period requirements.**

2374 (1) A producer is eligible to add the surplus lines of authority to the person's producer's
2375 license if the producer:

2376 (a) has passed the applicable examination;

2377 (b) has been a producer with property and casualty lines of authority for at least three
2378 years during the four years immediately preceding the date of application; and

2379 (c) has paid the applicable fee under Section 31A-3-103.

2380 (2) A person is eligible to become a consultant only if the person has acted in a
2381 capacity that would provide the person with preparation to act as an insurance consultant for a
2382 period aggregating not less than three years during the four years immediately preceding the
2383 date of application.

2384 (3) (a) A resident producer with an accident and health line of authority may sell
2385 long-term care insurance if the producer:

2386 (i) initially completes a minimum of eight hours of long-term care training before
2387 selling long-term care coverage; and

2388 (ii) after completing the training required by Subsection (3)(a)(i), completes a
 2389 minimum of four hours of long-term care training during each subsequent two year licensing
 2390 period.

2391 (b) A course taken to satisfy a long-term care training requirement may be used toward
 2392 satisfying a producer continuing education requirement.

2393 (c) Long-term care training is not a continuing education requirement to renew a
 2394 producer license.

2395 (d) An insurer that issues long-term care insurance shall demonstrate to the
 2396 commissioner, upon request, that a producer who is appointed by the insurer and who sells long
 2397 term care insurance coverage is in compliance with this Subsection (3).

2398 (4) (a) A producer with a life insurance line of authority may solicit the sale of an
 2399 annuity product if the producer:

2400 (i) has adequate knowledge of the product to recommend the annuity; and

2401 (ii) is in compliance with the insurer's standards for product training.

2402 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 2403 commissioner shall adopt rules to implement this Subsection (4).

2404 ~~[(3)]~~ (5) The training periods required under this section apply only to an individual
 2405 applying for a license under this chapter.

2406 Section 19. Section **31A-23a-204** is amended to read:

2407 **31A-23a-204. Special requirements for title insurance producers and agencies.**

2408 A title insurance producer, including an agency, shall be licensed in accordance with
 2409 this chapter, with the additional requirements listed in this section.

2410 (1) (a) A person that receives a new license under this title as a title insurance agency,
 2411 shall at the time of licensure be owned or managed by ~~[one or more individuals who are]~~ at
 2412 least one individual who is licensed for at least three of the five years immediately ~~[proceeding]~~
 2413 preceding the date on which the title insurance agency applies for a license with both:

2414 (i) a search line of authority; and

2415 (ii) an escrow line of authority.

2416 (b) A title insurance agency subject to Subsection (1)(a) may comply with Subsection
 2417 (1)(a) by having the title insurance agency owned or managed by:

2418 (i) one or more individuals who are licensed with the search line of authority for the

2419 time period provided in Subsection (1)(a); and
2420 (ii) one or more individuals who are licensed with the escrow line of authority for the
2421 time period provided in Subsection (1)(a).
2422 (c) A person licensed as a title insurance agency shall at all times during the term of
2423 licensure be owned or managed by at least one individual who is licensed for at least three
2424 years within the preceding five year period with both:
2425 (i) a search line of authority; and
2426 (ii) an escrow line of authority.
2427 ~~[(c)]~~ (d) The Title and Escrow Commission may by rule, subject to Section 31A-2-404,
2428 exempt an attorney with real estate experience from the experience requirements in Subsection
2429 (1)(a).
2430 (e) The following are required to have a resident license in this state to conduct
2431 business in this state:
2432 (i) a title insurance agency; or
2433 (ii) a producer who holds a line of authority described in Subsection
2434 31A-23a-106(2)(a)(vi).
2435 (2) (a) A title insurance agency or producer appointed by an insurer shall maintain:
2436 (i) a fidelity bond;
2437 (ii) a professional liability insurance policy; or
2438 (iii) a financial protection:
2439 (A) equivalent to that described in Subsection (2)(a)(i) or (ii); and
2440 (B) that the commissioner considers adequate.
2441 (b) The bond, insurance, or financial protection required by this Subsection (2):
2442 (i) shall be supplied under a contract approved by the commissioner to provide
2443 protection against the improper performance of any service in conjunction with the issuance of
2444 a contract or policy of title insurance; and
2445 (ii) be in a face amount no less than \$50,000.
2446 (c) The Title and Escrow Commission may by rule, subject to Section 31A-2-404,
2447 exempt title insurance producers from the requirements of this Subsection (2) upon a finding
2448 that, and only so long as, the required policy or bond is generally unavailable at reasonable
2449 rates.

(3) A title insurance agency or producer appointed by an insurer may maintain a reserve fund to the extent monies were deposited before July 1, 2008, and not withdrawn to the income of the title insurance producer.

(4) An examination for licensure shall include questions regarding the search and examination of title to real property.

(5) A title insurance producer may not perform the functions of escrow unless the title insurance producer has been examined on the fiduciary duties and procedures involved in those functions.

(6) The Title and Escrow Commission shall adopt rules, subject to Section 31A-2-404, after consulting with the department and the department's test administrator, establishing an examination for a license that will satisfy this section.

(7) A license may be issued to a title insurance producer who has qualified:

(a) to perform only searches and examinations of title as specified in Subsection (4);

(b) to handle only escrow arrangements as specified in Subsection (5); or

(c) to act as a title marketing representative.

(8) (a) A person licensed to practice law in Utah is exempt from the requirements of Subsections (2) and (3) if that person issues 12 or less policies in any 12-month period.

(b) In determining the number of policies issued by a person licensed to practice law in Utah for purposes of Subsection (8)(a), if the person licensed to practice law in Utah issues a policy to more than one party to the same closing, the person is considered to have issued only one policy.

(9) A person licensed to practice law in Utah, whether exempt under Subsection (8) or not, shall maintain a trust account separate from a law firm trust account for all title and real estate escrow transactions.

Section 20. Section **31A-23a-406** is amended to read:

31A-23a-406. Title insurance producer's business.

(1) A title insurance producer may do escrow involving real property transactions if all of the following exist:

(a) the title insurance producer is licensed with:

(i) the title line of authority; and

(ii) the escrow subline of authority;

2481 (b) the title insurance producer is appointed by a title insurer authorized to do business
2482 in the state;

2483 (c) the title insurance producer issues one or more of the following ~~[is to be issued]~~ as
2484 part of the transaction:

2485 (i) an owner's policy of title insurance; or
2486 (ii) a lender's policy of title insurance;

2487 (d) ~~[(i) all funds]~~ money deposited with the title insurance producer in connection with
2488 any escrow:

2489 ~~[(A) are]~~ (i) is deposited:
2490 ~~[(H)] (A)~~ in a federally insured financial institution; and
2491 ~~[(H)] (B)~~ in a trust account that is separate from all other trust account ~~[funds that are]~~
2492 money that is not related to real estate transactions; ~~[and]~~

2493 ~~[(B) are]~~ (ii) is the property of the one or more persons entitled to ~~[them]~~ the money
2494 under the provisions of the escrow; and

2495 ~~[(ii) are]~~ (iii) is segregated escrow by escrow in the records of the title insurance
2496 producer;

2497 (e) earnings on ~~[funds]~~ money held in escrow may be paid out of the escrow account to
2498 any person in accordance with the conditions of the escrow; and

2499 (f) the escrow does not require the title insurance producer to hold:

2500 (i) construction ~~[funds]~~ money; or
2501 (ii) ~~[funds]~~ money held for exchange under Section 1031, Internal Revenue Code.

2502 (2) Notwithstanding Subsection (1), a title insurance producer may engage in the
2503 escrow business if:

2504 (a) the escrow involves:

2505 (i) a mobile home;
2506 (ii) a grazing right;
2507 (iii) a water right; or
2508 (iv) other personal property authorized by the commissioner; and

2509 (b) the title insurance producer complies with ~~[all the requirements of]~~ this section
2510 except for ~~[the requirement of]~~ Subsection (1)(c).

2511 (3) ~~[Funds]~~ Money held in escrow:

2512 (a) ~~[are]~~ is not subject to any debts of the title insurance producer;

2513 (b) may only be used to fulfill the terms of the individual escrow under which the

2514 ~~[funds were]~~ money is accepted; and

2515 (c) may not be used until ~~[att]~~ the conditions of the escrow ~~[have been]~~ are met.

2516 (4) Assets or property other than escrow ~~[funds]~~ money received by a title insurance

2517 producer in accordance with an escrow shall be maintained in a manner that will:

2518 (a) reasonably preserve and protect the asset or property from loss, theft, or damages;

2519 and

2520 (b) otherwise comply with ~~[att]~~ the general duties and responsibilities of a fiduciary or

2521 bailee.

2522 (5) (a) A check from the trust account described in Subsection (1)(d) may not be

2523 drawn, executed, or dated, or ~~[funds]~~ money otherwise disbursed unless the segregated escrow

2524 account from which ~~[funds are]~~ money is to be disbursed contains a sufficient credit balance

2525 consisting of collected ~~[or]~~ and cleared ~~[funds]~~ money at the time the check is drawn, executed,

2526 or dated, or ~~[funds are]~~ money is otherwise disbursed.

2527 (b) As used in this Subsection (5), ~~[funds are]~~ money is considered to be "collected ~~[or]~~

2528 and cleared," and may be disbursed as follows:

2529 (i) cash may be disbursed on the same day the cash is deposited;

2530 (ii) a wire transfer may be disbursed on the same day the wire transfer is deposited; and

2531 ~~[(iii) the following may be disbursed on the day following the date of deposit:]~~

2532 ~~[(A) a cashier's check;]~~

2533 ~~[(B) a certified check;]~~

2534 ~~[(C) a teller's check;]~~

2535 ~~[(D) a U.S. Postal Service money order; and]~~

2536 ~~[(E) a check drawn on a Federal Reserve Bank or Federal Home Loan Bank; and]~~

2537 ~~[(iv) any other check or deposit may be disbursed:]~~

2538 ~~[(A) within the time limits provided under the Expedited Funds Availability Act, 12~~

2539 ~~U.S.C. Section 4001 et seq., as amended, and related regulations of the Federal Reserve~~

2540 ~~System; or]~~

2541 ~~[(B) upon written notification from the financial institution to which the funds have~~

2542 ~~been deposited, that final settlement has occurred on the deposited item.]~~

~~[(c) Subject to Subsections (5)(a) and (b), any material change to a settlement statement made after the final closing documents are executed must be authorized or acknowledged by date and signature on each page of the settlement statement by the one or more persons affected by the change before disbursement of funds.]~~

(iii) the proceeds of one or more of the following financial instruments may be disbursed on the same day the financial instruments are deposited if received from a single party to the real estate transaction and if the aggregate of the financial instruments for the real estate transaction is less than \$10,000:

(A) a cashier's check, certified check, or official check that is drawn on an existing account at a federally insured financial institution;

(B) a check drawn on the trust account of a principal broker or associate broker licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, if the title producer has reasonable and prudent grounds to believe sufficient money will be available from the trust account on which the check is drawn at the time of disbursement of proceeds from the title producer's escrow account;

(C) a personal check not to exceed \$500 per closing;

(D) a check drawn on the escrow account of another title producer, if the title producer in the escrow transaction has reasonable and prudent grounds to believe that sufficient money will be available for withdrawal from the account upon which the check is drawn at the time of disbursement of money from the escrow account of the title producer in the escrow transaction;
or

(E) a check issued by a farm credit service authorized under the Farm Credit Act of 1971, 12 U.S.C. Sec. 2001 et seq., as amended.

(c) Money received from a financial instrument described in Subsection (5)(b)(iii)(B) or (C) may be disbursed:

(i) within the time limits provided under the Expedited Funds Availability Act, 12 U.S.C. Sec. 4001 et seq., as amended, and related regulations of the Federal Reserve System; or

(ii) upon notification from the financial institution to which the money has been deposited that final settlement has occurred on the deposited financial instrument.

(6) [The] A title insurance producer shall maintain [records of all receipts and disbursements of escrow funds] a record of a receipt or disbursement of escrow money.

2574 (7) ~~[The]~~ A title insurance producer shall comply with:

2575 (a) Section 31A-23a-409;

2576 (b) Title 46, Chapter 1, Notaries Public Reform Act; and

2577 (c) any rules adopted by the Title and Escrow Commission, subject to Section

2578 31A-2-404, that govern escrows.

2579 Section 21. Section **31A-23a-408** is amended to read:

2580 **31A-23a-408. Representations of agency.**

2581 ~~[No]~~ A person may not represent ~~[himself as]~~ that the person is acting in behalf of an

2582 insurer unless a written agency contract is in effect giving the person authority from the insurer

2583 and the insurer ~~[has appointed]~~ appoints that person to act in behalf of the insurer.

2584 Section 22. Section **31A-23a-412** is amended to read:

2585 **31A-23a-412. Place of business and residence address -- Records.**

2586 (1) (a) ~~[All licensees]~~ A licensee under this chapter shall register and maintain with the
2587 commissioner:

2588 (i) the address and telephone numbers of [their] the licensee's principal place of
2589 business[-]; and

2590 (ii) a valid business email address at which the commissioner may contact the licensee.

2591 (b) If ~~[the]~~ a licensee is an individual, in addition to complying with Subsection (1)(a)
2592 the individual shall ~~[provide to]~~ register and maintain with the commissioner the individual's
2593 residence address and telephone number.

2594 (c) A licensee shall notify the commissioner within 30 days of ~~[any]~~ a change of any of
2595 the following required to be registered with the commissioner under this section:

2596 (i) an address [or];

2597 (ii) a telephone number[-]; or

2598 (iii) a business email address.

2599 (2) (a) Except as provided under Subsection (3), ~~[every]~~ a licensee under this chapter
2600 shall keep at the principal place of business address registered under Subsection (1), separate
2601 and distinct books and records of ~~[all]~~ the transactions consummated under the Utah license.

2602 (b) The books and records described in Subsection (2)(a) shall:

2603 (i) be in an organized form;

2604 (ii) be available to the commissioner for inspection upon reasonable notice; and

2605 (iii) include all of the following:

2606 (A) if the licensee is a producer, limited line producer, consultant, managing general
2607 agent, or reinsurance intermediary:

2608 (I) a record of each insurance contract procured by or issued through the licensee, with
2609 the names of insurers and insureds, the amount of premium and commissions or other
2610 compensation, and the subject of the insurance;

2611 (II) the names of any other producers, limited line producers, consultants, managing
2612 general agents, or reinsurance intermediaries from whom business is accepted, and of persons
2613 to whom commissions or allowances of any kind are promised or paid; and

2614 (III) a record of [aH] the consumer complaints forwarded to the licensee by an
2615 insurance regulator;

2616 (B) if the licensee is a consultant, a record of each agreement outlining the work
2617 performed and the fee for the work; and

2618 (C) any additional information which:

2619 (I) is customary for a similar business; or

2620 (II) may reasonably be required by the commissioner by rule.

2621 (3) Subsection (2) is satisfied if the books and records specified in Subsection (2) can
2622 be obtained immediately from a central storage place or elsewhere by on-line computer
2623 terminals located at the registered address.

2624 (4) A licensee who represents only a single insurer satisfies Subsection (2) if the
2625 insurer maintains the books and records pursuant to Subsection (2) at a place satisfying
2626 Subsections (1) and (5).

2627 (5) (a) The books and records maintained under Subsection (2) or Section
2628 31A-23a-413 shall be available for the inspection of the commissioner during all business
2629 hours for a period of time after the date of the transaction as specified by the commissioner by
2630 rule, but in no case for less than the current calendar year plus three years.

2631 (b) Discarding books and records after the applicable record retention period has
2632 expired does not place the licensee in violation of a later-adopted longer record retention
2633 period.

2634 Section 23. Section **31A-23a-415** is amended to read:

2635 **31A-23a-415. Assessment on title insurance agencies or title insurers -- Account**

2636 **created.**

2637 (1) For purposes of this section:

2638 (a) "Premium" is as defined in Subsection 59-9-101(3).

2639 (b) "Title insurer" means a person:

2640 (i) making any contract or policy of title insurance as:

2641 (A) insurer;

2642 (B) guarantor; or

2643 (C) surety;

2644 (ii) proposing to make any contract or policy of title insurance as:

2645 (A) insurer;

2646 (B) guarantor; or

2647 (C) surety; or

2648 (iii) transacting or proposing to transact any phase of title insurance, including:

2649 (A) soliciting;

2650 (B) negotiating preliminary to execution;

2651 (C) executing of a contract of title insurance;

2652 (D) insuring; and

2653 (E) transacting matters subsequent to the execution of the contract and arising out of

2654 the contract.

2655 (c) "Utah risks" means insuring, guaranteeing, or indemnifying with regard to real or
2656 personal property located in Utah, an owner of real or personal property, the holders of liens or
2657 encumbrances on that property, or others interested in the property against loss or damage
2658 suffered by reason of:

2659 (i) liens or encumbrances upon, defects in, or the unmarketability of the title to the
2660 property; or

2661 (ii) invalidity or unenforceability of any liens or encumbrances on the property.

2662 (2) (a) The commissioner may assess each title insurer and each title insurance agency
2663 an annual assessment:

2664 (i) determined by the Title and Escrow Commission:

2665 (A) after consultation with the commissioner; and

2666 (B) in accordance with this Subsection (2); and

2667 (ii) to be used for the purposes described in Subsection (3).
2668 (b) A title insurance agency shall be assessed up to:
2669 (i) [~~\$200~~] for the first office in each county in which the title insurance agency
2670 maintains an office[~~;~~and]:
2671 (A) \$200, for fiscal year 2011-2012; and
2672 (B) for a fiscal year beginning on or after July 1, 2012, an amount that equals the sum
2673 of the amount under this Subsection (2)(b)(i) for the previous year and an amount calculated by
2674 multiplying the amount under this Subsection (2)(b)(i) for the previous year by the actual
2675 percent change during the previous calendar year in the consumer price index; and
2676 (ii) [~~\$100~~] for each additional office the title insurance agency maintains in the county
2677 described in Subsection (2)(b)(i)[~~;~~]:
2678 (A) \$100, for fiscal year 2011-2012; and
2679 (B) for a fiscal year beginning on or after July 1, 2012, an amount that equals the sum
2680 of the amount under this Subsection (2)(b)(ii) for the previous year and an amount calculated
2681 by multiplying the amount under this Subsection (2)(b)(ii) for the previous year by the actual
2682 percent change during the previous calendar year in the consumer price index.
2683 (c) A title insurer shall be assessed up to:
2684 (i) [~~\$200~~] for the first office in each county in which the title insurer maintains an
2685 office[~~;~~]:
2686 (A) \$200, for fiscal year 2011-2012; and
2687 (B) for a fiscal year beginning on or after July 1, 2012, an amount that equals the sum
2688 of the amount under this Subsection (2)(c)(i) for the previous year and an amount calculated by
2689 multiplying the amount under this Subsection (2)(c)(i) for the previous year by the actual
2690 percent change during the previous calendar year in the consumer price index;
2691 (ii) [~~\$100~~] for each additional office the title insurer maintains in the county described
2692 in Subsection (2)(c)(i)[~~;~~and]:
2693 (A) \$100, for fiscal year 2011-2012; and
2694 (B) for a fiscal year beginning on or after July 1, 2012, an amount that equals the sum
2695 of the amount under this Subsection (2)(c)(ii) for the previous year and an amount calculated
2696 by multiplying the amount under this Subsection (2)(c)(ii) for the previous year by the actual
2697 percent change during the previous calendar year in the consumer price index; and

2698 (iii) an amount calculated by:
2699 (A) aggregating the assessments imposed on:
2700 (I) title insurance agencies under Subsection (2)(b); and
2701 (II) title insurers under Subsections (2)(c)(i) and (2)(c)(ii);
2702 (B) subtracting the amount determined under Subsection (2)(c)(iii)(A) from the total
2703 costs and expenses determined under Subsection (2)(d); and
2704 (C) multiplying:
2705 (I) the amount calculated under Subsection (2)(c)(iii)(B); and
2706 (II) the percentage of total premiums for title insurance on Utah risk that are premiums
2707 of the title insurer.
2708 (d) Notwithstanding Section 31A-3-103 and subject to Section 31A-2-404, the Title
2709 and Escrow Commission by rule shall establish the amount of costs and expenses described
2710 under Subsection (3) that will be covered by the assessment, except the costs or expenses to be
2711 covered by the assessment may not ~~[exceed \$75,000 annually.]~~ annually exceed:
2712 (A) \$75,000, for fiscal year 2011-2012; and
2713 (B) for a fiscal year beginning on or after July 1, 2012, an amount that equals the sum
2714 of the amount under this Subsection (2)(d) for the previous year and an amount calculated by
2715 multiplying the amount under this Subsection (2)(d) for the previous year by the actual percent
2716 change during the previous calendar year in the consumer price index.
2717 (3) (a) Money received by the state under this section shall be deposited into the Title
2718 Licensee Enforcement Restricted Account.
2719 (b) There is created in the General Fund a restricted account known as the "Title
2720 Licensee Enforcement Restricted Account."
2721 (c) The Title Licensee Enforcement Restricted Account shall consist of the money
2722 received by the state under this section.
2723 (d) The commissioner shall administer the Title Licensee Enforcement Restricted
2724 Account. Subject to appropriations by the Legislature, the commissioner shall use the money
2725 deposited into the Title Licensee Enforcement Restricted Account only to pay for a cost or
2726 expense incurred by the department in the administration, investigation, and enforcement of
2727 this part and Part 5, Compensation of Producers and Consultants, related to:
2728 (i) the marketing of title insurance; and

2729 (ii) audits of agencies.

2730 (e) An appropriation from the Title Licensee Enforcement Restricted Account is
2731 nonlapsing.

2732 (4) The assessment imposed by this section shall be in addition to any premium
2733 assessment imposed under Subsection 59-9-101(3).

2734 (5) For purposes of this section, the commissioner shall calculate the consumer price
2735 index in accordance with changes in the Consumer Price Index published by the United States
2736 Bureau of Labor Statistics selected by the commissioner by rule made in accordance with Title
2737 63G, Chapter 3, Utah Administrative Rulemaking Act, for the February immediately preceding
2738 the calculation.

2739 Section 24. Section **31A-25-208** is amended to read:

2740 **31A-25-208. Revocation, suspension, surrender, lapsing, limiting, or otherwise**
2741 **terminating a license -- Rulemaking for renewal and reinstatement.**

2742 (1) A license type issued under this chapter remains in force until:

2743 (a) revoked or suspended under Subsection (4);

2744 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
2745 administrative action;

2746 (c) the licensee dies or is adjudicated incompetent as defined under:

2747 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

2748 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
2749 Minors;

2750 (d) lapsed under Section 31A-25-210; or

2751 (e) voluntarily surrendered.

2752 (2) The following may be reinstated within one year after the day on which the license
2753 is no longer in force:

2754 (a) a lapsed license; or

2755 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
2756 not be reinstated after the license period in which the license is voluntarily surrendered.

2757 (3) Unless otherwise stated in ~~[the]~~ a written agreement for the voluntary surrender of a
2758 license, submission and acceptance of a voluntary surrender of a license does not prevent the
2759 department from pursuing additional disciplinary or other action authorized under:

2760 (a) this title; or
2761 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
2762 Administrative Rulemaking Act.

2763 (4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an
2764 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
2765 commissioner may:

2766 (i) revoke a license;
2767 (ii) suspend a license for a specified period of 12 months or less;
2768 (iii) limit a license in whole or in part; or
2769 (iv) deny a license application.

2770 (b) The commissioner may take an action described in Subsection (4)(a) if the
2771 commissioner finds that the licensee:

2772 (i) is unqualified for a license under Section 31A-25-202, 31A-25-203, or 31A-25-204;
2773 (ii) has violated:
2774 (A) an insurance statute;
2775 (B) a rule that is valid under Subsection 31A-2-201(3); or
2776 (C) an order that is valid under Subsection 31A-2-201(4);
2777 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
2778 delinquency proceedings in any state;
2779 (iv) fails to pay a final judgment rendered against the person in this state within 60
2780 days after the day on which the judgment became final;
2781 (v) fails to meet the same good faith obligations in claims settlement that is required of
2782 admitted insurers;
2783 (vi) is affiliated with and under the same general management or interlocking
2784 directorate or ownership as another third party administrator that transacts business in this state
2785 without a license;
2786 (vii) refuses:
2787 (A) to be examined; or
2788 (B) to produce its accounts, records, and files for examination;
2789 (viii) has an officer who refuses to:
2790 (A) give information with respect to the third party administrator's affairs; or

2791 (B) perform any other legal obligation as to an examination;
2792 (ix) provides information in the license application that is:
2793 (A) incorrect;
2794 (B) misleading;
2795 (C) incomplete; or
2796 (D) materially untrue;
2797 (x) has violated an insurance law, valid rule, or valid order of another state's insurance
2798 department;
2799 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
2800 (xii) has improperly withheld, misappropriated, or converted money or properties
2801 received in the course of doing insurance business;
2802 (xiii) has intentionally misrepresented the terms of an actual or proposed:
2803 (A) insurance contract; or
2804 (B) application for insurance;
2805 (xiv) has been convicted of a felony;
2806 (xv) has admitted or been found to have committed an insurance unfair trade practice
2807 or fraud;
2808 (xvi) in the conduct of business in this state or elsewhere has:
2809 (A) used fraudulent, coercive, or dishonest practices; or
2810 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
2811 (xvii) has had an insurance license or its equivalent, denied, suspended, or revoked in
2812 any other state, province, district, or territory;
2813 (xviii) has forged another's name to:
2814 (A) an application for insurance; or
2815 (B) a document related to an insurance transaction;
2816 (xix) has improperly used notes or any other reference material to complete an
2817 examination for an insurance license;
2818 (xx) has knowingly accepted insurance business from an individual who is not
2819 licensed;
2820 (xxi) has failed to comply with an administrative or court order imposing a child
2821 support obligation;

2822 (xxii) has failed to:
2823 (A) pay state income tax; or
2824 (B) comply with an administrative or court order directing payment of state income
2825 tax;
2826 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and
2827 Law Enforcement Act of 1994, 18 U.S.C. [~~Sees.~~] Sec. 1033 and 1034; or
2828 (xxiv) has engaged in methods and practices in the conduct of business that endanger
2829 the legitimate interests of customers and the public.
2830 (c) For purposes of this section, if a license is held by an agency, both the agency itself
2831 and any individual designated under the license are considered to be the holders of the agency
2832 license.
2833 (d) If an individual designated under the agency license commits an act or fails to
2834 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
2835 the commissioner may suspend, revoke, or limit the license of:
2836 (i) the individual;
2837 (ii) the agency if the agency:
2838 (A) is reckless or negligent in its supervision of the individual; or
2839 (B) knowingly participated in the act or failure to act that is the ground for suspending,
2840 revoking, or limiting the license; or
2841 (iii) (A) the individual; and
2842 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).
2843 (5) A licensee under this chapter is subject to the penalties for acting as a licensee
2844 without a license if:
2845 (a) the licensee's license is:
2846 (i) revoked;
2847 (ii) suspended;
2848 (iii) limited;
2849 (iv) surrendered in lieu of administrative action;
2850 (v) lapsed; or
2851 (vi) voluntarily surrendered; and
2852 (b) the licensee:

(i) continues to act as a licensee; or

(ii) violates the terms of the license limitation.

(6) A licensee under this chapter shall immediately report to the commissioner:

(a) a revocation, suspension, or limitation of the person's license in any other state, the District of Columbia, or a territory of the United States;

(b) the imposition of a disciplinary sanction imposed on that person by any other state, the District of Columbia, or a territory of the United States; or

(c) a judgment or injunction entered against the person on the basis of conduct involving:

(i) fraud;

(ii) deceit;

(iii) misrepresentation; or

(iv) a violation of an insurance law or rule.

(7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a license in lieu of administrative action may specify a time, not to exceed five years, within which the former licensee may not apply for a new license.

(b) If no time is specified in the order or agreement described in Subsection (7)(a), the former licensee may not apply for a new license for five years from the day on which the order or agreement is made without the express approval of the commissioner.

(8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this part if so ordered by the court.

(9) The commissioner shall by rule prescribe the license renewal and reinstatement procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 25. Section **31A-26-206** is amended to read:

31A-26-206. Continuing education requirements.

(1) Pursuant to this section, the commissioner shall by rule prescribe continuing education requirements for each class of license under Section 31A-26-204.

(2) (a) The commissioner shall impose continuing education requirements in accordance with a two-year licensing period in which the licensee meets the requirements of this Subsection (2).

(b) (i) ~~[Except as provided in Subsection (2)(b)(iii), the]~~ The continuing education

2884 requirements shall require:

2885 (A) that a licensee complete 24 credit hours of continuing education for every two-year
2886 licensing period; and

2887 (B) that ~~[three]~~ 3 of the 24 credit hours described in Subsection (2)(b)(i)(A) be ethics
2888 courses~~[-and]~~.

2889 ~~[(C) that the licensee complete at least half of the required hours through classroom~~
2890 ~~hours of insurance-related instruction.]~~

2891 ~~[(ii) The hours not completed through classroom hours]~~

2892 (ii) A continuing education hour completed in accordance with Subsection

2893 (2)(b)(i)~~[(C)]~~ may be obtained through:

2894 (A) classroom attendance;

2895 ~~[(A)]~~ (B) home study;

2896 ~~[(B)]~~ (C) watching a video recording;

2897 ~~[(C)]~~ (D) experience credit; or

2898 ~~[(D)]~~ (E) other methods provided by rule.

2899 (iii) Notwithstanding ~~[Subsections]~~ Subsection (2)(b)(i)~~[(A) and (B)]~~, a title insurance
2900 adjuster is required to complete 12 credit hours of continuing education for every two-year
2901 licensing period, with ~~[three]~~ 3 of the credit hours being ethics courses.

2902 (c) A licensee may obtain continuing education hours at any time during the two-year
2903 licensing period.

2904 (d) (i) ~~[Beginning May 3, 1999, a]~~ A licensee is exempt from the continuing education
2905 requirements of this section if:

2906 (A) the licensee was first licensed before April 1, ~~[1970]~~ 1978;

2907 (B) the license does not have a continuous lapse for a period of more than one year,
2908 except for a license for which the licensee has had an exemption approved before May 11,
2909 2011;

2910 ~~[(B)]~~ (C) the licensee requests an exemption from the department; and

2911 ~~[(C)]~~ (D) the department approves the exemption.

2912 (ii) If the department approves the exemption under Subsection (2)(d)(i), the licensee is
2913 not required to apply again for the exemption.

2914 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

2915 commissioner shall by rule:

2916 (i) publish a list of insurance professional designations whose continuing education
2917 requirements can be used to meet the requirements for continuing education under Subsection
2918 (2)(b); and

2919 (ii) authorize a professional adjuster ~~[associations]~~ association to:

2920 (A) offer a qualified ~~[programs for all classes of licenses]~~ program for a classification
2921 of license on a geographically accessible basis; and

2922 (B) collect a reasonable ~~[fees]~~ fee for funding and administration of ~~[the continuing~~
2923 ~~education programs]~~ a qualified program, subject to the review and approval of the
2924 commissioner.

2925 (f) (i) ~~[The fees]~~ A fee permitted under Subsection (2)(e)(ii)(B) that ~~[are]~~ is charged to
2926 fund and administer a qualified program shall reasonably relate to the ~~[costs]~~ cost of
2927 administering the qualified program.

2928 (ii) Nothing in this section shall prohibit a provider of a continuing education
2929 ~~[programs or courses]~~ program or course from charging ~~[fees]~~ a fee for attendance at ~~[courses]~~
2930 a course offered for continuing education credit.

2931 (iii) ~~[The fees]~~ A fee permitted under Subsection (2)(e)(ii)(B) that ~~[are]~~ is charged for
2932 attendance at an association program may be less for an association member, ~~[based]~~ on the
2933 basis of the member's affiliation expense, but shall preserve the right of a nonmember to attend
2934 without affiliation.

2935 (3) The continuing education requirements of this section apply only to ~~[licensees who~~
2936 ~~are natural persons]~~ a licensee who is an individual.

2937 (4) The continuing education requirements of this section do not apply to ~~[members]~~ a
2938 member of the Utah State Bar.

2939 (5) The commissioner shall designate ~~[courses that satisfy]~~ a course that satisfies the
2940 requirements of this section, including ~~[those]~~ a course presented by ~~[insurers]~~ an insurer.

2941 (6) A nonresident adjuster is considered to have satisfied this state's continuing
2942 education requirements if:

2943 (a) the nonresident adjuster satisfies the nonresident producer's home state's continuing
2944 education requirements for a licensed insurance adjuster; and

2945 (b) on the same basis the nonresident adjuster's home state considers satisfaction of

2946 Utah's continuing education requirements for a producer as satisfying the continuing education
2947 requirements of the home state.

2948 (7) A licensee subject to this section shall keep documentation of completing the
2949 continuing education requirements of this section for two years after the end of the two-year
2950 licensing period to which the continuing education requirement applies.

2951 Section 26. Section **31A-26-208** is amended to read:

2952 **31A-26-208. Nonresident jurisdictional agreement.**

2953 (1) (a) If a nonresident license applicant has a valid license from the nonresident
2954 license applicant's home state and the conditions of Subsection (1)(b) are met, the
2955 commissioner shall:

2956 (i) waive any license requirement for a license under this chapter; and

2957 (ii) issue the nonresident license applicant a nonresident adjuster's license.

2958 (b) Subsection (1)(a) applies if:

2959 (i) the nonresident license applicant:

2960 (A) is licensed as a resident in the nonresident license applicant's home state at the time
2961 the nonresident license applicant applies for a nonresident adjuster license;

2962 (B) has submitted the proper request for licensure;

2963 (C) has submitted to the commissioner:

2964 (I) the application for licensure that the nonresident license applicant submitted to the
2965 applicant's home state; or

2966 (II) a completed uniform application; and

2967 (D) has paid the applicable fees under Section 31A-3-103;

2968 (ii) the nonresident license applicant's license in the applicant's home state is in good
2969 standing; and

2970 (iii) the nonresident license applicant's home state awards nonresident adjuster licenses
2971 to residents of this state on the same basis as this state awards licenses to residents of that home
2972 state.

2973 (2) A nonresident applicant shall execute in a form acceptable to the commissioner an
2974 agreement to be subject to the jurisdiction of the commissioner and courts of this state on any
2975 matter related to the adjuster's insurance activities in this state, on the basis of:

2976 (a) service of process under Sections 31A-2-309 and 31A-2-310; or

(b) other service authorized under the Utah Rules of Civil Procedure or Section 78B-3-206.

(3) The commissioner may verify ~~[the third party administrator's]~~ an adjuster's licensing status through the database maintained by:

(a) the National Association of Insurance Commissioners; or

(b) an affiliate or subsidiary of the National Association of Insurance Commissioners.

(4) The commissioner may not assess a greater fee for an insurance license or related service to a person not residing in this state based solely on the fact that the person does not reside in this state.

Section 27. Section **31A-26-213** is amended to read:

31A-26-213. Revocation, suspension, surrender, lapsing, limiting, or otherwise terminating a license -- Rulemaking for renewal or reinstatement.

(1) A license type issued under this chapter remains in force until:

(a) revoked or suspended under Subsection (5);

(b) surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;

(c) the licensee dies or is adjudicated incompetent as defined under:

(i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

(ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors;

(d) lapsed under Section 31A-26-214.5; or

(e) voluntarily surrendered.

(2) The following may be reinstated within one year after the day on which the license is no longer in force:

(a) a lapsed license; or

(b) a voluntarily surrendered license, except that a voluntarily surrendered license may not be reinstated after the license period in which it is voluntarily surrendered.

(3) Unless otherwise stated in ~~[the]~~ a written agreement for the voluntary surrender of a license, submission and acceptance of a voluntary surrender of a license does not prevent the department from pursuing additional disciplinary or other action authorized under:

(a) this title; or

3008 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
3009 Administrative Rulemaking Act.

3010 (4) A license classification issued under this chapter remains in force until:
3011 (a) the qualifications pertaining to a license classification are no longer met by the
3012 licensee; or
3013 (b) the supporting license type:
3014 (i) is revoked or suspended under Subsection (5); or
3015 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of
3016 administrative action.

3017 (5) (a) If the commissioner makes a finding under Subsection (5)(b) as part of an
3018 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
3019 commissioner may:
3020 (i) revoke:
3021 (A) a license; or
3022 (B) a license classification;
3023 (ii) suspend for a specified period of 12 months or less:
3024 (A) a license; or
3025 (B) a license classification;
3026 (iii) limit in whole or in part:
3027 (A) a license; or
3028 (B) a license classification; or
3029 (iv) deny a license application.

3030 (b) The commissioner may take an action described in Subsection (5)(a) if the
3031 commissioner finds that the licensee:
3032 (i) is unqualified for a license or license classification under Section 31A-26-202,
3033 31A-26-203, 31A-26-204, or 31A-26-205;
3034 (ii) has violated:
3035 (A) an insurance statute;
3036 (B) a rule that is valid under Subsection 31A-2-201(3); or
3037 (C) an order that is valid under Subsection 31A-2-201(4);
3038 (iii) is insolvent, or the subject of receivership, conservatorship, rehabilitation, or other

3039 delinquency proceedings in any state;
3040 (iv) fails to pay a final judgment rendered against the person in this state within 60
3041 days after the judgment became final;
3042 (v) fails to meet the same good faith obligations in claims settlement that is required of
3043 admitted insurers;
3044 (vi) is affiliated with and under the same general management or interlocking
3045 directorate or ownership as another insurance adjuster that transacts business in this state
3046 without a license;
3047 (vii) refuses:
3048 (A) to be examined; or
3049 (B) to produce its accounts, records, and files for examination;
3050 (viii) has an officer who refuses to:
3051 (A) give information with respect to the insurance adjuster's affairs; or
3052 (B) perform any other legal obligation as to an examination;
3053 (ix) provides information in the license application that is:
3054 (A) incorrect;
3055 (B) misleading;
3056 (C) incomplete; or
3057 (D) materially untrue;
3058 (x) has violated an insurance law, valid rule, or valid order of another state's insurance
3059 department;
3060 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
3061 (xii) has improperly withheld, misappropriated, or converted money or properties
3062 received in the course of doing insurance business;
3063 (xiii) has intentionally misrepresented the terms of an actual or proposed:
3064 (A) insurance contract; or
3065 (B) application for insurance;
3066 (xiv) has been convicted of a felony;
3067 (xv) has admitted or been found to have committed an insurance unfair trade practice
3068 or fraud;
3069 (xvi) in the conduct of business in this state or elsewhere has:

3070 (A) used fraudulent, coercive, or dishonest practices; or
3071 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
3072 (xvii) has had an insurance license, or its equivalent, denied, suspended, or revoked in
3073 any other state, province, district, or territory;
3074 (xviii) has forged another's name to:
3075 (A) an application for insurance; or
3076 (B) a document related to an insurance transaction;
3077 (xix) has improperly used notes or any other reference material to complete an
3078 examination for an insurance license;
3079 (xx) has knowingly accepted insurance business from an individual who is not
3080 licensed;
3081 (xxi) has failed to comply with an administrative or court order imposing a child
3082 support obligation;
3083 (xxii) has failed to:
3084 (A) pay state income tax; or
3085 (B) comply with an administrative or court order directing payment of state income
3086 tax;
3087 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and
3088 Law Enforcement Act of 1994, 18 U.S.C. [~~Secs.~~] Sec. 1033 and 1034; or
3089 (xxiv) has engaged in methods and practices in the conduct of business that endanger
3090 the legitimate interests of customers and the public.
3091 (c) For purposes of this section, if a license is held by an agency, both the agency itself
3092 and any individual designated under the license are considered to be the holders of the license.
3093 (d) If an individual designated under the agency license commits an act or fails to
3094 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
3095 the commissioner may suspend, revoke, or limit the license of:
3096 (i) the individual;
3097 (ii) the agency, if the agency:
3098 (A) is reckless or negligent in its supervision of the individual; or
3099 (B) knowingly participated in the act or failure to act that is the ground for suspending,
3100 revoking, or limiting the license; or

3101 (iii) (A) the individual; and
3102 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).
3103 (6) A licensee under this chapter is subject to the penalties for conducting an insurance
3104 business without a license if:
3105 (a) the licensee's license is:
3106 (i) revoked;
3107 (ii) suspended;
3108 (iii) limited;
3109 (iv) surrendered in lieu of administrative action;
3110 (v) lapsed; or
3111 (vi) voluntarily surrendered; and
3112 (b) the licensee:
3113 (i) continues to act as a licensee; or
3114 (ii) violates the terms of the license limitation.
3115 (7) A licensee under this chapter shall immediately report to the commissioner:
3116 (a) a revocation, suspension, or limitation of the person's license in any other state, the
3117 District of Columbia, or a territory of the United States;
3118 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
3119 the District of Columbia, or a territory of the United States; or
3120 (c) a judgment or injunction entered against that person on the basis of conduct
3121 involving:
3122 (i) fraud;
3123 (ii) deceit;
3124 (iii) misrepresentation; or
3125 (iv) a violation of an insurance law or rule.
3126 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a
3127 license in lieu of administrative action may specify a time not to exceed five years within
3128 which the former licensee may not apply for a new license.
3129 (b) If no time is specified in the order or agreement described in Subsection (8)(a), the
3130 former licensee may not apply for a new license for five years without the express approval of
3131 the commissioner.

3132 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
3133 a license issued under this part if so ordered by a court.

3134 (10) The commissioner shall by rule prescribe the license renewal and reinstatement
3135 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3136 Section 28. Section **31A-26-306** is amended to read:

3137 **31A-26-306. Place of business -- Records.**

3138 (1) (a) An insurance adjuster licensed under this chapter shall~~[-(i)]~~ register and
3139 maintain with the commissioner;

3140 (i) the address and telephone number of the licensee's principal place of business; [and]

3141 (ii) a valid business email address at which the commissioner may contact the licensee;
3142 and

3143 ~~[(ii)]~~ (iii) if the licensee is an individual, ~~[provide]~~ the licensee's residence address and
3144 telephone number.

3145 (b) A licensee shall notify the commissioner within 30 days of ~~[any change of]~~ a
3146 change in one of the following required to be registered under Subsection (1)(a):

3147 (i) an address [or];

3148 (ii) a telephone number[-]; or

3149 (iii) a business email address.

3150 (2) Except as provided under Subsection (3), ~~[every]~~ an insurance adjuster shall keep at
3151 the address registered under Subsection (1), a record of ~~[all]~~ the transactions consummated
3152 under the insurance adjuster's license, including a record of:

3153 (a) each investigation or adjustment undertaken or consummated; and

3154 (b) ~~[any]~~ a fee, commission, or other compensation received or to be received by the
3155 adjuster on account of the investigation or adjustment.

3156 (3) Subsection (2) is satisfied if the records specified in ~~[that subsection]~~ Subsection
3157 (2) can be obtained immediately from a central storage place elsewhere by on-line computer
3158 terminals located at the registered address.

3159 (4) (a) ~~[The records]~~ A record maintained as to a transaction under Subsection (2) shall
3160 be kept available for the inspection of the commissioner during all business hours for a period
3161 of time after the date of the transaction specified by the commissioner by rule, but in no case
3162 for less than the current calendar year plus three years.

(b) Discarding [~~records~~] a record after the then applicable record retention period is passed does not place the licensee in violation of a later-adopted longer record retention period.

Section 29. Section **31A-29-103** is amended to read:

31A-29-103. Definitions.

As used in this chapter:

(1) "Board" means the board of directors of the pool created in Section 31A-29-104.

(2) (a) "Creditable coverage" has the same meaning as provided in Section 31A-1-301.

(b) "Creditable coverage" does not include a period of time in which there is a significant break in coverage, as defined in Section 31A-1-301.

(3) "Domicile" means the place where an individual has a fixed and permanent home and principal establishment:

(a) to which the individual, if absent, intends to return; and

(b) in which the individual, and the individual's family voluntarily reside, not for a special or temporary purpose, but with the intention of making a permanent home.

(4) "Enrollee" means an individual who has met the eligibility requirements of the pool and is covered by a pool policy under this chapter.

(5) "Health benefit plan":

(a) is defined in Section 31A-1-301; and

(b) does not include a plan that:

(i) (A) has a maximum actuarial value less than 100% of the basic health care plan; or

(B) has a maximum annual limit of \$100,000 or less; and

(ii) meets other criteria established by the board.

(6) "Health care facility" means any entity providing health care services which is licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(7) "Health care insurance" is defined in Section 31A-1-301.

(8) "Health care provider" has the same meaning as provided in Section 78B-3-403.

(9) "Health care services" means:

(a) any service or product:

(i) used in furnishing to any individual medical care or hospitalization; or

(ii) incidental to furnishing medical care or hospitalization; and

(b) any other service or product furnished for the purpose of preventing, alleviating,

3194 curing, or healing human illness or injury.

3195 (10) "Health maintenance organization" has the same meaning as provided in Section
3196 31A-8-101.

3197 (11) "Health plan" means any arrangement by which an individual, including a
3198 dependent or spouse, covered or making application to be covered under the pool has:

3199 (a) access to hospital and medical benefits or reimbursement including group or
3200 individual insurance or subscriber contract;

3201 (b) coverage through:

3202 (i) a health maintenance organization;

3203 (ii) a preferred provider prepayment;

3204 (iii) group practice;

3205 (iv) individual practice plan; or

3206 (v) health care insurance;

3207 (c) coverage under an uninsured arrangement of group or group-type contracts
3208 including employer self-insured, cost-plus, or other benefits methodologies not involving
3209 insurance;

3210 (d) coverage under a group type contract which is not available to the general public
3211 and can be obtained only because of connection with a particular organization or group; and

3212 (e) coverage by Medicare or other governmental benefit.

3213 (12) "HIPAA" means the Health Insurance Portability and Accountability Act ~~[of 1996,~~
3214 ~~Pub. L. 104-191, 110 Stat. 1936]~~.

3215 (13) "HIPAA eligible" means an individual who is eligible under the provisions of the
3216 Health Insurance Portability and Accountability Act ~~[of 1996, Pub. L. 104-191, 110 Stat.~~
3217 ~~1936]~~.

3218 (14) "Insurer" means:

3219 (a) an insurance company authorized to transact accident and health insurance business
3220 in this state;

3221 (b) a health maintenance organization; or

3222 (c) a self-insurer not subject to federal preemption.

3223 (15) "Medicaid" means coverage under Title XIX of the Social Security Act, 42 U.S.C.
3224 Sec. 1396 et seq., as amended.

(16) "Medicare" means coverage under both Part A and B of Title XVIII of the Social Security Act, 42 U.S.C. Sec. 1395 et seq., as amended.

(17) "Plan of operation" means the plan developed by the board in accordance with Section 31A-29-105 and includes the articles, bylaws, and operating rules adopted by the board under Section 31A-29-106.

(18) "Pool" means the Utah Comprehensive Health Insurance Pool created in Section 31A-29-104.

(19) "Pool fund" means the Comprehensive Health Insurance Pool Enterprise Fund created in Section 31A-29-120.

(20) "Pool policy" means a health benefit plan policy issued under this chapter.

(21) "Preexisting condition" has the same meaning as defined in Section 31A-1-301.

(22) (a) "Resident" or "residency" means a person who is domiciled in this state.

(b) A resident retains residency if that resident leaves this state:

(i) to serve in the armed forces of the United States; or

(ii) for religious or educational purposes.

(23) "Third-party administrator" has the same meaning as provided in Section 31A-1-301.

Section 30. Section **31A-29-106** is amended to read:

31A-29-106. Powers of board.

(1) The board shall have the general powers and authority granted under the laws of this state to insurance companies licensed to transact health care insurance business. In addition, the board shall have the specific authority to:

(a) enter into contracts to carry out the provisions and purposes of this chapter, including, with the approval of the commissioner, contracts with:

(i) similar pools of other states for the joint performance of common administrative functions; or

(ii) persons or other organizations for the performance of administrative functions;

(b) sue or be sued, including taking such legal action necessary to avoid the payment of improper claims against the pool or the coverage provided through the pool;

(c) establish appropriate rates, rate schedules, rate adjustments, expense allowances, agents' referral fees, claim reserve formulas, and any other actuarial function appropriate to the

3256 operation of the pool;

3257 (d) issue policies of insurance in accordance with the requirements of this chapter;

3258 (e) retain an executive director and appropriate legal, actuarial, and other personnel as

3259 necessary to provide technical assistance in the operations of the pool;

3260 (f) establish rules, conditions, and procedures for reinsuring risks under this chapter;

3261 (g) cause the pool to have an annual audit of its operations by the state auditor;

3262 (h) coordinate with the Department of Health in seeking to obtain from the Centers for

3263 Medicare and Medicaid Services, or other appropriate office or agency of government, all

3264 appropriate waivers, authority, and permission needed to coordinate the coverage available

3265 from the pool with coverage available under Medicaid, either before or after Medicaid

3266 coverage, or as a conversion option upon completion of Medicaid eligibility, without the

3267 necessity for requalification by the enrollee;

3268 (i) provide for and employ cost containment measures and requirements including

3269 preadmission certification, concurrent inpatient review, and individual case management for

3270 the purpose of making the pool more cost-effective;

3271 (j) offer pool coverage through contracts with health maintenance organizations,

3272 preferred provider organizations, and other managed care systems that will manage costs while

3273 maintaining quality care;

3274 (k) establish annual limits on benefits payable under the pool to or on behalf of any

3275 enrollee;

3276 (l) exclude from coverage under the pool specific benefits, medical conditions, and

3277 procedures for the purpose of protecting the financial viability of the pool;

3278 (m) administer the Pool Fund;

3279 (n) make rules in accordance with Title 63G, Chapter 3, Utah Administrative

3280 Rulemaking Act, to implement this chapter; and

3281 (o) adopt, trademark, and copyright a trade name for the pool for use in marketing and

3282 publicizing the pool and its products.

3283 (2) (a) The board shall prepare and submit an annual report to the Legislature which

3284 shall include:

3285 (i) the net premiums anticipated;

3286 (ii) actuarial projections of payments required of the pool;

(iii) the expenses of administration; and

(iv) the anticipated reserves or losses of the pool.

(b) The budget for operation of the pool is subject to the approval of the board.

(c) The administrative budget of the board and the commissioner under this chapter shall comply with the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, and is subject to review and approval by the Legislature.

(3) (a) The board shall on or before September 1, 2004, require the plan administrator or an independent actuarial consultant retained by the plan administrator to redetermine the reasonable equivalent of the criteria for uninsurability required under Subsection 31A-30-106(1)(~~f~~)(h) that is used by the board to determine eligibility for coverage in the pool.

(b) The board shall redetermine the criteria established in Subsection (3)(a) at least every five years thereafter.

Section 31. Section **31A-30-103 (Effective 01/01/11)** is amended to read:

31A-30-103 (Effective 01/01/11). Definitions.

As used in this chapter:

(1) "Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual approved by the commissioner that a covered carrier is in compliance with ~~[Section]~~ Sections 31A-30-106 and 31A-30-106.1, based upon the examination of the covered carrier, including review of the appropriate records and of the actuarial assumptions and methods used by the covered carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(3) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under a rating system for that class of business by the covered carrier to covered insureds with similar case characteristics for health benefit plans with the same or similar coverage.

(4) "Basic benefit plan" or "basic coverage" means the coverage provided in the Basic Health Care Plan under Section 31A-22-613.5.

(5) "Carrier" means any person or entity that provides health insurance in this state

3318 including:

- 3319 (a) an insurance company;
- 3320 (b) a prepaid hospital or medical care plan;
- 3321 (c) a health maintenance organization;
- 3322 (d) a multiple employer welfare arrangement; and
- 3323 (e) any other person or entity providing a health insurance plan under this title.

3324 (6) (a) Except as provided in Subsection (6)(b), "case characteristics" means
3325 demographic or other objective characteristics of a covered insured that are considered by the
3326 carrier in determining premium rates for the covered insured.

3327 (b) "Case characteristics" do not include:

- 3328 (i) duration of coverage since the policy was issued;
- 3329 (ii) claim experience; and
- 3330 (iii) health status.

3331 (7) "Class of business" means all or a separate grouping of covered insureds that is
3332 permitted by the ~~[department]~~ commissioner in accordance with Section 31A-30-105.

3333 (8) "Conversion policy" means a policy providing coverage under the conversion
3334 provisions required in Chapter 22, Part 7, Group Accident and Health Insurance.

3335 (9) "Covered carrier" means any individual carrier or small employer carrier subject to
3336 this chapter.

3337 (10) "Covered individual" means any individual who is covered under a health benefit
3338 plan subject to this chapter.

3339 (11) "Covered insureds" means small employers and individuals who are issued a
3340 health benefit plan that is subject to this chapter.

3341 (12) "Dependent" means an individual to the extent that the individual is defined to be
3342 a dependent by:

- 3343 (a) the health benefit plan covering the covered individual; and
- 3344 (b) Chapter 22, Part 6, Accident and Health Insurance.

3345 (13) "Established geographic service area" means a geographical area approved by the
3346 commissioner within which the carrier is authorized to provide coverage.

3347 (14) "Index rate" means, for each class of business as to a rating period for covered
3348 insureds with similar case characteristics, the arithmetic average of the applicable base

3349 premium rate and the corresponding highest premium rate.

3350 (15) "Individual carrier" means a carrier that provides coverage on an individual basis
3351 through a health benefit plan regardless of whether:

3352 (a) coverage is offered through:

3353 (i) an association;

3354 (ii) a trust;

3355 (iii) a discretionary group; or

3356 (iv) other similar groups; or

3357 (b) the policy or contract is situated out-of-state.

3358 (16) "Individual conversion policy" means a conversion policy issued to:

3359 (a) an individual; or

3360 (b) an individual with a family.

3361 (17) "Individual coverage count" means the number of natural persons covered under a
3362 carrier's health benefit products that are individual policies.

3363 (18) "Individual enrollment cap" means the percentage set by the commissioner in
3364 accordance with Section 31A-30-110.

3365 (19) "New business premium rate" means, for each class of business as to a rating
3366 period, the lowest premium rate charged or offered, or that could have been charged or offered,
3367 by the carrier to covered insureds with similar case characteristics for newly issued health
3368 benefit plans with the same or similar coverage.

3369 (20) "Premium" means [am] money paid by covered insureds and covered individuals
3370 as a condition of receiving coverage from a covered carrier, including any fees or other
3371 contributions associated with the health benefit plan.

3372 (21) (a) "Rating period" means the calendar period for which premium rates
3373 established by a covered carrier are assumed to be in effect, as determined by the carrier.

3374 (b) A covered carrier may not have:

3375 (i) more than one rating period in any calendar month; and

3376 (ii) no more than 12 rating periods in any calendar year.

3377 (22) "Resident" means an individual who has resided in this state for at least 12
3378 consecutive months immediately preceding the date of application.

3379 (23) "Short-term limited duration insurance" means a health benefit product that:

3380 (a) is not renewable; and
3381 (b) has an expiration date specified in the contract that is less than 364 days after the
3382 date the plan became effective.

3383 (24) "Small employer carrier" means a carrier that provides health benefit plans
3384 covering eligible employees of one or more small employers in this state, regardless of
3385 whether:

3386 (a) coverage is offered through:

3387 (i) an association;

3388 (ii) a trust;

3389 (iii) a discretionary group; or

3390 (iv) other similar grouping; or

3391 (b) the policy or contract is situated out-of-state.

3392 (25) "Uninsurable" means an individual who:

3393 (a) is eligible for the Comprehensive Health Insurance Pool coverage under the
3394 underwriting criteria established in Subsection 31A-29-111(5); or

3395 (b) (i) is issued a certificate for coverage under Subsection 31A-30-108(3); and

3396 (ii) has a condition of health that does not meet consistently applied underwriting
3397 criteria as established by the commissioner in accordance with Subsections 31A-30-106(1)(~~(i)~~)
3398 ~~and (j)~~(g) and (h) for which coverage the applicant is applying.

3399 (26) "Uninsurable percentage" for a given calendar year equals UC/CI where, for
3400 purposes of this formula:

3401 (a) "CI" means the carrier's individual coverage count as of December 31 of the
3402 preceding year; and

3403 (b) "UC" means the number of uninsurable individuals who were issued an individual
3404 policy on or after July 1, 1997.

3405 Section 32. Section **31A-30-105** is amended to read:

3406 **31A-30-105. Establishment of classes of business.**

3407 (1) For ~~[policies that go into]~~ a policy that takes effect on or after January 1, 2011, a
3408 covered carrier may not establish a separate class of business unless:

3409 (a) the covered carrier submits an application to the ~~[department]~~ commissioner to
3410 establish a separate class of business;

(b) the covered carrier demonstrates to the satisfaction of the ~~[department]~~ commissioner that a separate class of business is justified under the provisions of this section; and

(c) the ~~[department]~~ commissioner approves the carrier's application for the use of a separate class of business.

(2) (a) The ~~[presumption of the department shall be]~~ commissioner shall have a presumption against the use of a separate class of business by a covered insured, except when the covered carrier demonstrates that ~~[the provisions of]~~ this Subsection (2) ~~[apply]~~ applies.

(b) The ~~[department]~~ commissioner may approve the use of a separate class of business only if the covered carrier can demonstrate that the use of a separate class of business is necessary due to substantial differences in either expected claims experience or administrative costs related to the following reasons:

(i) the covered carrier uses more than one type of system for the marketing and sale of health benefit plans to covered insureds;

(ii) the covered carrier has acquired a class of business from another covered carrier; or

(iii) the covered carrier provides coverage to one or more association groups.

(3) The commissioner may establish regulations to provide for a period of transition in order for a covered carrier to come into compliance with Subsection (2) in the instance of acquisition of an additional class of business from another covered carrier.

(4) The commissioner may approve the establishment of up to five classes of business per covered carrier upon application to the commissioner and a finding by the commissioner that such action would substantially enhance the efficiency and fairness of the health insurance marketplace subject to this chapter.

(5) A covered carrier may not establish a class of business based solely on the marketing or sale of a health benefit plan as a defined contribution arrangement health benefit plan, or through the Health Insurance Exchange.

Section 33. Section **31A-30-106 (Effective 01/01/11)** is amended to read:

31A-30-106 (Effective 01/01/11). Individual premiums -- Rating restrictions -- Disclosure.

(1) Premium rates for health benefit plans for individuals under this chapter are subject to ~~[the provisions of]~~ this section.

(a) The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than 20%.

(b) (i) For a class of business, the premium rates charged during a rating period to covered insureds with similar case characteristics for the same or similar coverage, or the rates that could be charged to the individual under the rating system for that class of business, may not vary from the index rate by more than 30% of the index rate [~~provided in Section 31A-30-106.1~~] except as provided under Subsection (1)(b)(ii).

(ii) A carrier that offers individual and small employer health benefit plans may use the small employer index rates to establish the rate limitations for individual policies, even if some individual policies are rated below the small employer base rate.

(c) The percentage increase in the premium rate charged to a covered insured for a new rating period, adjusted pro rata for rating periods less than a year, may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period;

(ii) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status, or duration of coverage of the covered individuals as determined from the rate manual for the class of business of the carrier offering an individual health benefit plan; and

(iii) any adjustment due to change in coverage or change in the case characteristics of the covered insured as determined from the rate manual for the class of business of the carrier offering an individual health benefit plan.

(d) (i) A carrier offering an individual health benefit plan shall apply rating factors, including case characteristics, consistently with respect to all covered insureds in a class of business.

(ii) Rating factors shall produce premiums for identical individuals that:

(A) differ only by the amounts attributable to plan design; and

(B) do not reflect differences due to the nature of the individuals assumed to select particular health benefit products.

(iii) A carrier offering an individual health benefit plan shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

(e) For the purposes of this Subsection (1), a health benefit plan that uses a restricted network provision may not be considered similar coverage to a health benefit plan that does not use a restricted network provision, provided that use of the restricted network provision results in substantial difference in claims costs.

(f) A carrier offering a health benefit plan to an individual may not, without prior approval of the commissioner, use case characteristics other than:

(i) age;

(ii) gender;

(iii) geographic area; and

(iv) family composition.

(g) (i) The commissioner shall establish rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(A) implement this chapter; and

(B) assure that rating practices used by carriers who offer health benefit plans to individuals are consistent with the purposes of this chapter.

(ii) The rules described in Subsection (1)(g)(i) may include rules that:

(A) assure that differences in rates charged for health benefit products by carriers who offer health benefit plans to individuals are reasonable and reflect objective differences in plan design, not including differences due to the nature of the individuals assumed to select particular health benefit products;

(B) prescribe the manner in which case characteristics may be used by carriers who offer health benefit plans to individuals;

(C) implement the individual enrollment cap under Section 31A-30-110, including specifying:

(I) the contents for certification;

(II) auditing standards;

(III) underwriting criteria for uninsurable classification; and

(IV) limitations on high risk enrollees under Section 31A-30-111; and

(D) establish the individual enrollment cap under Subsection 31A-30-110(1).

(h) Before implementing regulations for underwriting criteria for uninsurable classification, the commissioner shall contract with an independent consulting organization to

3504 develop industry-wide underwriting criteria for uninsurability based on an individual's expected
3505 claims under open enrollment coverage exceeding 325% of that expected for a standard
3506 insurable individual with the same case characteristics.

3507 (i) The commissioner shall revise rules issued for Sections 31A-22-602 and
3508 31A-22-605 regarding individual accident and health policy rates to allow rating in accordance
3509 with this section.

3510 (2) For purposes of Subsection (1)(c)(i), if a health benefit product is a health benefit
3511 product into which the covered carrier is no longer enrolling new covered insureds, the covered
3512 carrier shall use the percentage change in the base premium rate, provided that the change does
3513 not exceed, on a percentage basis, the change in the new business premium rate for the most
3514 similar health benefit product into which the covered carrier is actively enrolling new covered
3515 insureds.

3516 (3) (a) A covered carrier may not transfer a covered insured involuntarily into or out of
3517 a class of business.

3518 (b) A covered carrier may not offer to transfer a covered insured into or out of a class
3519 of business unless the offer is made to transfer all covered insureds in the class of business
3520 without regard to:

- 3521 (i) case characteristics;
- 3522 (ii) claim experience;
- 3523 (iii) health status; or
- 3524 (iv) duration of coverage since issue.

3525 (4) (a) A carrier who offers a health benefit plan to an individual shall maintain at the
3526 carrier's principal place of business a complete and detailed description of its rating practices
3527 and renewal underwriting practices, including information and documentation that demonstrate
3528 that the carrier's rating methods and practices are:

- 3529 (i) based upon commonly accepted actuarial assumptions; and
- 3530 (ii) in accordance with sound actuarial principles.

3531 (b) (i) Each carrier subject to this section shall file with the commissioner, on or before
3532 April 1 of each year, in a form, manner, and containing such information as prescribed by the
3533 commissioner, an actuarial certification certifying that:

3534 (A) the carrier is in compliance with this chapter; and

(B) the rating methods of the carrier are actuarially sound.

(ii) A copy of the certification required by Subsection (4)(b)(i) shall be retained by the carrier at the carrier's principal place of business.

(c) A carrier shall make the information and documentation described in this Subsection (4) available to the commissioner upon request.

(d) Records submitted to the commissioner under this section shall be maintained by the commissioner as protected records under Title 63G, Chapter 2, Government Records Access and Management Act.

Section 34. Section **31A-30-106.1** is amended to read:

31A-30-106.1. Small employer premiums -- Rating restrictions -- Disclosure.

(1) Premium rates for small employer health benefit plans under this chapter are subject to ~~[the provisions of]~~ this section for a health benefit plan that is issued or renewed, on or after January 1, 2011.

(2) (a) The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than 20%.

(b) For a class of business, the premium rates charged during a rating period to covered insureds with similar case characteristics for the same or similar coverage, or the rates that could be charged to an employer group under the rating system for that class of business, may not vary from the index rate by more than 30% of the index rate, except when catastrophic mental health coverage is selected as provided in Subsection 31A-22-625(2)(d).

(3) The percentage increase in the premium rate charged to a covered insured for a new rating period, adjusted pro rata for rating periods less than a year, may not exceed the sum of the following:

(a) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period;

(b) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status, or duration of coverage of the covered individuals as determined from the small employer carrier's rate manual for the class of business, except when catastrophic mental health coverage is selected as provided in Subsection 31A-22-625(2)(d); and

(c) any adjustment due to change in coverage or change in the case characteristics of

3566 the covered insured as determined for the class of business from the small employer carrier's
3567 rate manual.

3568 (4) (a) Adjustments in rates for claims experience, health status, and duration from
3569 issue may not be charged to individual employees or dependents.

3570 (b) Rating adjustments and factors, including case characteristics, shall be applied
3571 uniformly and consistently to the rates charged for all employees and dependents of the small
3572 employer.

3573 (c) Rating factors shall produce premiums for identical groups that:

3574 (i) differ only by the amounts attributable to plan design; and

3575 (ii) do not reflect differences due to the nature of the groups assumed to select
3576 particular health benefit products.

3577 (d) A small employer carrier shall treat all health benefit plans issued or renewed in the
3578 same calendar month as having the same rating period.

3579 (5) A health benefit plan that uses a restricted network provision may not be considered
3580 similar coverage to a health benefit plan that does not use a restricted network provision,
3581 provided that use of the restricted network provision results in substantial difference in claims
3582 costs.

3583 (6) The small employer carrier may not use case characteristics other than the
3584 following:

3585 (a) age of the employee, as determined at the beginning of the plan year, limited to:

3586 (i) the following age bands:

3587 (A) less than 20;

3588 (B) 20-24;

3589 (C) 25-29;

3590 (D) 30-34;

3591 (E) 35-39;

3592 (F) 40-44;

3593 (G) 45-49;

3594 (H) 50-54;

3595 (I) 55-59;

3596 (J) 60-64; and

3597 (K) 65 and above; and
3598 (ii) a standard slope ratio range for each age band, applied to each family composition
3599 tier rating structure under Subsection (6)(c):
3600 (A) as developed by the [~~department~~] commissioner by administrative rule;
3601 (B) not to exceed an overall ratio of 5:1; and
3602 (C) the age slope ratios for each age band may not overlap;
3603 (b) geographic area; and
3604 (c) family composition, limited to:
3605 (i) an overall ratio of 5:1 or less; and
3606 (ii) a four tier rating structure that includes:
3607 (A) employee only;
3608 (B) employee plus spouse;
3609 (C) employee plus a dependent or dependents; and
3610 (D) a family, consisting of an employee plus spouse, and a dependent or dependents.
3611 (7) If a health benefit plan is a health benefit plan into which the small employer carrier
3612 is no longer enrolling new covered insureds, the small employer carrier shall use the percentage
3613 change in the base premium rate, provided that the change does not exceed, on a percentage
3614 basis, the change in the new business premium rate for the most similar health benefit product
3615 into which the small employer carrier is actively enrolling new covered insureds.
3616 (8) (a) A covered carrier may not transfer a covered insured involuntarily into or out of
3617 a class of business.
3618 (b) A covered carrier may not offer to transfer a covered insured into or out of a class
3619 of business unless the offer is made to transfer all covered insureds in the class of business
3620 without regard to:
3621 (i) case characteristics;
3622 (ii) claim experience;
3623 (iii) health status; or
3624 (iv) duration of coverage since issue.
3625 (9) (a) Each small employer carrier shall maintain at the small employer carrier's
3626 principal place of business a complete and detailed description of its rating practices and
3627 renewal underwriting practices, including information and documentation that demonstrate that

3628 the small employer carrier's rating methods and practices are:

3629 (i) based upon commonly accepted actuarial assumptions; and

3630 (ii) in accordance with sound actuarial principles.

3631 (b) (i) Each small employer carrier shall file with the commissioner on or before April

3632 1 of each year, in a form and manner and containing information as prescribed by the

3633 commissioner, an actuarial certification certifying that:

3634 (A) the small employer carrier is in compliance with this chapter; and

3635 (B) the rating methods of the small employer carrier are actuarially sound.

3636 (ii) A copy of the certification required by Subsection (9)(b)(i) shall be retained by the

3637 small employer carrier at the small employer carrier's principal place of business.

3638 (c) A small employer carrier shall make the information and documentation described

3639 in this Subsection (9) available to the commissioner upon request.

3640 (10) (a) The commissioner shall, by July 1, 2010, establish rules in accordance with

3641 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

3642 (i) implement this chapter; and

3643 (ii) assure that rating practices used by small employer carriers under this section and

3644 carriers for individual plans under Section 31A-30-106, [~~as effective~~] in effect on January 1,

3645 2011, are consistent with the purposes of this chapter.

3646 (b) The rules may:

3647 (i) assure that differences in rates charged for health benefit plans by carriers are

3648 reasonable and reflect objective differences in plan design, not including differences due to the

3649 nature of the groups or individuals assumed to select particular health benefit plans; and

3650 (ii) prescribe the manner in which case characteristics may be used by small employer

3651 and individual carriers.

3652 (11) Records submitted to the commissioner under this section shall be maintained by

3653 the commissioner as protected records under Title 63G, Chapter 2, Government Records

3654 Access and Management Act.

3655 Section 35. Section **31A-30-106.5** is amended to read:

3656 **31A-30-106.5. Conversion policy -- Premiums -- Rating restrictions.**

3657 (1) [~~All provisions of Section 31A-30-106.1 apply~~] Section 31A-30-106 applies to

3658 conversion policies.

(2) Conversion policy premium rates may not exceed by more than 35% the index rate for ~~[small employers]~~ individuals with similar case characteristics for any class of business in which the policy form has been ~~[approved]~~ filed.

(3) An insurer may not consider pregnancy of a covered insured in determining its conversion policy premium rates.

Section 36. Section **31A-30-108** is amended to read:

31A-30-108. Eligibility for small employer and individual market.

(1) (a) Small employer carriers shall accept residents for small group coverage as set forth in the Health Insurance Portability and Accountability Act, ~~[P.L. 104-191, 110 Stat. 1962,]~~ Sec. 2701(f) and 2711(a).

(b) Individual carriers shall accept residents for individual coverage pursuant:

(i) to ~~[P.L. 104-191, 110 Stat. 1979]~~ Health Insurance Portability and Accountability Act, Sec. 2741(a)-(b); and

(ii) Subsection (3).

(2) (a) Small employer carriers shall offer to accept all eligible employees and their dependents at the same level of benefits under any health benefit plan provided to a small employer.

(b) Small employer carriers may:

(i) request a small employer to submit a copy of the small employer's quarterly income tax withholdings to determine whether the employees for whom coverage is provided or requested are bona fide employees of the small employer; and

(ii) deny or terminate coverage if the small employer refuses to provide documentation requested under Subsection (2)(b)(i).

(3) Except as provided in Subsections (5) and (6) and Section 31A-30-110, individual carriers shall accept for coverage individuals to whom all of the following conditions apply:

(a) the individual is not covered or eligible for coverage:

(i) (A) as an employee of an employer;

(B) as a member of an association; or

(C) as a member of any other group; and

(ii) under:

(A) a health benefit plan; or

3690 (B) a self-insured arrangement that provides coverage similar to that provided by a
3691 health benefit plan as defined in Section 31A-1-301;

3692 (b) the individual is not covered and is not eligible for coverage under any public
3693 health benefits arrangement including:

3694 (i) the Medicare program established under Title XVIII of the Social Security Act;

3695 (ii) any act of Congress or law of this or any other state that provides benefits
3696 comparable to the benefits provided under this chapter; or

3697 (iii) coverage under the Comprehensive Health Insurance Pool Act created in Chapter
3698 29, Comprehensive Health Insurance Pool Act;

3699 (c) unless the maximum benefit has been reached the individual is not covered or
3700 eligible for coverage under any:

3701 (i) Medicare supplement policy;

3702 (ii) conversion option;

3703 (iii) continuation or extension under COBRA; or

3704 (iv) state extension;

3705 (d) the individual has not terminated or declined coverage described in Subsection
3706 (3)(a), (b), or (c) within 93 days of application for coverage, unless the individual is eligible for
3707 individual coverage under ~~[P.L. 104-191, 110 Stat. 1979]~~ Health Insurance Portability and
3708 Accountability Act, Sec. 2741(b), in which case, the requirement of this Subsection (3)(d) does
3709 not apply; and

3710 (e) the individual is certified as ineligible for the Health Insurance Pool if:

3711 (i) the individual applies for coverage with the Comprehensive Health Insurance Pool
3712 within 30 days after being rejected or refused coverage by the covered carrier and reapplies for
3713 coverage with that covered carrier within 30 days after the date of issuance of a certificate
3714 under Subsection 31A-29-111(5)(c); or

3715 (ii) the individual applies for coverage with any individual carrier within 45 days after:

3716 (A) notice of cancellation of coverage under Subsection 31A-29-115(1); or

3717 (B) the date of issuance of a certificate under Subsection 31A-29-111(5)(c) if the
3718 individual applied first for coverage with the Comprehensive Health Insurance Pool.

3719 (4) (a) If coverage is obtained under Subsection (3)(e)(i) and the required premium is
3720 paid, the effective date of coverage shall be the first day of the month following the individual's

3721 submission of a completed insurance application to that covered carrier.

3722 (b) If coverage is obtained under Subsection (3)(e)(ii) and the required premium is
3723 paid, the effective date of coverage shall be the day following the:

3724 (i) cancellation of coverage under Subsection 31A-29-115(1); or

3725 (ii) submission of a completed insurance application to the Comprehensive Health
3726 Insurance Pool.

3727 (5) (a) An individual carrier is not required to accept individuals for coverage under
3728 Subsection (3) if the carrier issues no new individual policies in the state after July 1, 1997.

3729 (b) A carrier described in Subsection (5)(a) may not issue new individual policies in
3730 the state for five years from July 1, 1997.

3731 (c) Notwithstanding Subsection (5)(b), a carrier may request permission to issue new
3732 policies after July 1, 1999, which may only be granted if:

3733 (i) the carrier accepts uninsurables as is required of a carrier entering the market under
3734 Subsection 31A-30-110; and

3735 (ii) the commissioner finds that the carrier's issuance of new individual policies:

3736 (A) is in the best interests of the state; and

3737 (B) does not provide an unfair advantage to the carrier.

3738 (6) (a) If the Comprehensive Health Insurance Pool, as set forth under ~~[Title 31A]~~,
3739 Chapter 29, is dissolved or discontinued, or if enrollment is capped or suspended, an individual
3740 carrier may decline to accept individuals applying for individual enrollment, other than
3741 individuals applying for coverage as set forth in ~~[P.L. 104-191, 110 Stat. 1979]~~ Health
3742 Insurance Portability and Accountability Act, Sec. 2741 (a)-(b).

3743 (b) Within two calendar days of taking action under Subsection (6)(a), an individual
3744 carrier will provide written notice to the ~~[Utah Insurance Department]~~ department.

3745 (7) (a) If a small employer carrier offers health benefit plans to small employers
3746 through a network plan, the small employer carrier may:

3747 (i) limit the employers that may apply for the coverage to those employers with eligible
3748 employees who live, reside, or work in the service area for the network plan; and

3749 (ii) within the service area of the network plan, deny coverage to an employer if the
3750 small employer carrier has demonstrated to the commissioner that the small employer carrier:

3751 (A) will not have the capacity to deliver services adequately to enrollees of any

3752 additional groups because of the small employer carrier's obligations to existing group contract
3753 holders and enrollees; and

3754 (B) applies this section uniformly to all employers without regard to:

3755 (I) the claims experience of an employer, an employer's employee, or a dependent of an
3756 employee; or

3757 (II) any health status-related factor relating to an employee or dependent of an
3758 employee.

3759 (b) (i) A small employer carrier that denies a health benefit product to an employer in
3760 any service area in accordance with this section may not offer coverage in the small employer
3761 market within the service area to any employer for a period of 180 days after the date the
3762 coverage is denied.

3763 (ii) This Subsection (7)(b) does not:

3764 (A) limit the small employer carrier's ability to renew coverage that is in force; or

3765 (B) relieve the small employer carrier of the responsibility to renew coverage that is in
3766 force.

3767 (c) Coverage offered within a service area after the 180-day period specified in
3768 Subsection (7)(b) is subject to the requirements of this section.

3769 Section 37. Section **31A-30-110** is amended to read:

3770 **31A-30-110. Individual enrollment cap.**

3771 (1) The commissioner shall set the individual enrollment cap at .5% on July 1, 1997.

3772 (2) The commissioner shall raise the individual enrollment cap by .5% at the later of
3773 the following dates:

3774 (a) six months from the last increase in the individual enrollment cap; or

3775 (b) the date when CCI/TI is greater than .90, where:

3776 (i) "CCI" is the total individual coverage count for all carriers certifying that their
3777 uninsurable percentage has reached the individual enrollment cap; and

3778 (ii) "TI" is the total individual coverage count for all carriers.

3779 (3) The commissioner may establish a minimum number of uninsurable individuals
3780 that a carrier entering the market who is subject to this chapter must accept under the individual
3781 enrollment provisions of this chapter.

3782 (4) Beginning July 1, 1997, an individual carrier may decline to accept individuals

3783 applying for individual enrollment under Subsection 31A-30-108(3), other than individuals
3784 applying for coverage as set forth in P.L. 104-191, 110 Stat. 1979, Sec. 2741 (a)-(b), if:

3785 (a) the uninsurable percentage for that carrier equals or exceeds the cap established in
3786 Subsection (1); and

3787 (b) the covered carrier has certified on forms provided by the commissioner that its
3788 uninsurable percentage equals or exceeds the individual enrollment cap.

3789 (5) The department may audit a carrier's records to verify whether the carrier's
3790 uninsurable classification meets industry standards for underwriting criteria as established by
3791 the commissioner in accordance with Subsection 31A-30-106(1)~~(f)~~(h).

3792 (6) (a) If the commissioner determines that individual enrollment is causing a
3793 substantial adverse effect on premiums, enrollment, or experience, the commissioner may
3794 suspend, limit, or delay further individual enrollment for up to 12 months.

3795 (b) The commissioner shall adopt rules to establish a uniform methodology for
3796 calculating and reporting loss ratios for individual policies for determining whether the
3797 individual enrollment provisions of Section 31A-30-108 should be waived for an individual
3798 carrier experiencing significant and adverse financial impact as a result of complying with
3799 those provisions.

3800 Section 38. Section **31A-30-112** is amended to read:

3801 **31A-30-112. Employee participation levels.**

3802 (1) (a) Except as provided in Subsection (2) and Section 31A-30-206, a requirement
3803 used by a covered carrier in determining whether to provide coverage to a small employer,
3804 including a requirement for minimum participation of eligible employees and minimum
3805 employer contributions, shall be applied uniformly among all small employers with the same
3806 number of eligible employees applying for coverage or receiving coverage from the covered
3807 carrier.

3808 (b) In addition to applying Subsection 31A-1-301~~(f21)~~(123), a covered carrier may
3809 require that a small employer have a minimum of two eligible employees to meet participation
3810 requirements.

3811 (2) A covered carrier may not increase a requirement for minimum employee
3812 participation or a requirement for minimum employer contribution applicable to a small
3813 employer at any time after the small employer is accepted for coverage.

3814 Section 39. Section **31A-31-108** is amended to read:

3815 **31A-31-108. Assessment of insurers.**

3816 (1) For purposes of this section:

3817 (a) The commissioner shall by rule made in accordance with Title 63G, Chapter 3,
3818 Utah Administrative Rulemaking Act, define:

3819 (i) "annuity consideration";

3820 (ii) "membership fees";

3821 (iii) "other fees";

3822 (iv) "deposit-type contract funds"; and

3823 (v) "other considerations in Utah."

3824 (b) "Utah consideration" means:

3825 (i) the total premiums written for Utah risks;

3826 (ii) annuity consideration;

3827 (iii) membership fees collected by the insurer;

3828 (iv) other fees collected by the insurer;

3829 (v) deposit-type contract funds; and

3830 (vi) other considerations in Utah.

3831 (c) "Utah risks" means insurance coverage on the lives, health, or against the liability
3832 of persons residing in Utah, or on property located in Utah, other than property temporarily in
3833 transit through Utah.

3834 (2) To implement this chapter, Section 34A-2-110, and Section 76-6-521, the
3835 commissioner may assess each admitted insurer and each nonadmitted insurer transacting
3836 insurance under Chapter 15, Parts 1, Unauthorized Insurers and Surplus Lines, and 2,
3837 Unauthorized Insurers Risk Retention Groups Act, an annual fee as follows:

3838 (a) \$150 for an insurer, if the sum of the Utah consideration for that insurer is less than
3839 or equal to \$1,000,000;

3840 (b) \$400 for an insurer, if the sum of the Utah consideration for that insurer is greater
3841 than \$1,000,000 but is less than or equal to \$2,500,000;

3842 (c) \$700 for an insurer, if the sum of the Utah consideration for that insurer is greater
3843 than \$2,500,000 but is less than or equal to \$5,000,000;

3844 (d) \$1,350 for an insurer, if the sum of the Utah consideration for that insurer is greater

3845 than \$5,000,000 but less than or equal to \$10,000,000;

3846 (e) \$5,150 for an insurer, if the sum of the Utah consideration for that insurer is greater
3847 than \$10,000,000 but less than \$50,000,000; and

3848 (f) \$12,350 for an insurer, if the sum of the Utah consideration for that insurer equals
3849 or exceeds \$50,000,000.

3850 (3) ~~[All money]~~ Money received by the state under this section shall be deposited ~~[in~~
3851 ~~the General Fund as a dedicated credit of the department for the purpose of providing funds to~~
3852 ~~pay for any costs and expenses incurred by the department in the administration, investigation,~~
3853 ~~and enforcement of this chapter, Section 34A-2-110, and Section 76-6-521.]~~ into the Insurance
3854 Fraud Investigation Restricted Account created in Subsection (4).

3855 (4) (a) There is created in the General Fund a restricted account known as the
3856 "Insurance Fraud Investigation Restricted Account."

3857 (b) The Insurance Fraud Investigation Restricted Account shall consist of the money
3858 received by the commissioner under this section and Section 31A-31-109.

3859 (c) The commissioner shall administer the Insurance Fraud Investigation Restricted
3860 Account. Subject to appropriations by the Legislature, the commissioner shall use the money
3861 deposited into the Insurance Fraud Investigation Restricted Account to pay for a cost or
3862 expense incurred by the commissioner in the administration, investigation, and enforcement of
3863 this chapter, Section 34A-2-110, and Section 76-6-521.

3864 Section 40. Section **31A-31-109** is amended to read:

3865 **31A-31-109. Civil penalties.**

3866 (1) In addition to other penalties provided by law, a person who violates this chapter:

3867 (a) is subject to the following civil penalties:

3868 (i) the person shall make full restitution; and

3869 (ii) the person shall pay the costs of enforcement of this chapter for the case in which
3870 the person is found to have violated this chapter:

3871 (A) as determined by the one or more authorized agencies involved; and

3872 (B) including costs of:

3873 (I) investigators;

3874 (II) attorneys; and

3875 (III) other public employees; and

(b) in the discretion of the court, may be required to pay to the state a civil penalty not to exceed three times that amount of value improperly sought or received from the fraudulent insurance act.

(2) (a) Money paid under Subsection (1)(a)(i) shall be paid to the person damaged by the fraudulent insurance act.

(b) Money paid under Subsection (1)(a)(ii) shall be paid to each applicable authorized agency in the following order:

(i) to the [~~General Fund as a dedicated credit of the department~~] Insurance Fraud Investigation Restricted Account created in Section 31A-31-108 for the costs of enforcement incurred by the [~~department~~] commissioner;

(ii) to the General Fund for the costs of enforcement incurred by a state agency other than the [~~department~~] commissioner;

(iii) to the applicable political subdivision for the costs of enforcement incurred by the political subdivision; and

(iv) to the applicable criminal investigative department or agency of the United States for the costs of enforcement incurred by the department or agency.

(c) Money paid under Subsection (1)(b) shall be paid into the General Fund.

(3) (a) A civil penalty assessed under Subsection (1) shall be awarded by the court as part of its judgment in both criminal and civil actions.

(b) A criminal action need not be brought against a person in order for that person to be civilly liable under this section.

Section 41. Section **31A-35-202** is amended to read:

31A-35-202. Board responsibilities.

(1) The board shall:

~~[(+)]~~ (a) meet:

~~[(+)]~~ (i) at least quarterly; and

~~[(+)]~~ (ii) at the call of the chair;

~~[(+)]~~ (b) make written recommendations to the commissioner for rules governing the following aspects of the bail bond surety insurance business:

~~[(+)]~~ (i) qualifications, applications, and fees for obtaining:

~~[(+)]~~ (A) a license required by this Section 31A-35-401; or

3907 [(~~iii~~)] (B) a certificate;
3908 [(~~b~~)] (ii) limits on the aggregate amounts of bail bonds;
3909 [(~~e~~)] (iii) unprofessional conduct;
3910 [(~~d~~)] (iv) procedures for hearing and resolving allegations of unprofessional conduct;
3911 and
3912 [(~~e~~)] (v) sanctions for unprofessional conduct;
3913 [(~~3~~)] (c) screen:
3914 [(~~a~~)] (i) bail bond surety company license applications; and
3915 [(~~b~~)] (ii) persons applying for a bail bond surety company license; and
3916 [(~~4~~)] (d) recommend to the commissioner action regarding the granting, renewing,
3917 suspending, revoking, and reinstating of bail bond surety company license[~~;~~and].
3918 (2) The board may:
3919 [(~~5~~)] (a) conduct investigations of allegations of unprofessional conduct on the part of
3920 persons or bail bond sureties involved in the business of bail bond surety insurance; and
3921 (b) provide the results of the investigations described in Subsection [(~~5~~)] (2)(a) to the
3922 commissioner with recommendations for:
3923 (i) action; and
3924 (ii) any appropriate sanctions.
3925 Section 42. Section **31A-35-406** is amended to read:
3926 **31A-35-406. Renewal and reinstatement.**
3927 (1) (a) A license under this chapter expires annually on August 14. To renew its
3928 license under this chapter, on or before [~~the last day of the month in which the license expires~~]
3929 July 15 a bail bond surety company shall:
3930 (i) complete and submit a renewal application to the department; and
3931 (ii) pay the department the applicable renewal fee established in accordance with
3932 Section 31A-3-103.
3933 (b) A bail bond surety company shall renew its license under this chapter annually as
3934 established by department rule, regardless of when the license is issued.
3935 (2) A bail bond surety company may apply for reinstatement of an expired bail bond
3936 surety company license within one year following the expiration of the license under
3937 Subsection (1) by:

3938 (a) submitting the renewal application required by Subsection (1); and
 3939 (b) paying a license reinstatement fee established in accordance with Section
 3940 31A-3-103.

3941 (3) If a bail bond surety company license has been expired for more than one year, the
 3942 person applying for reinstatement of the bail bond surety license shall:

3943 (a) submit a new application form to the commissioner; and
 3944 (b) pay the application fee established in accordance with Section 31A-3-103.

3945 (4) If a bail bond surety company license is suspended, the applicant may not submit an
 3946 application for a bail bond surety company license until after the end of the period of
 3947 suspension.

3948 (5) A fee collected under this section shall be deposited in the restricted account created
 3949 in Section 31A-35-407.

3950 Section 43. Section **31A-35-602** is amended to read:

3951 **31A-35-602. Place of business -- Records to be kept there.**

3952 (1) (a) ~~Every~~ A bail bond surety company shall have and maintain in this state a place
 3953 of business:

3954 (i) accessible to the public; and
 3955 (ii) where the bail bond surety company principally conducts transactions authorized by
 3956 its bail bond surety company license.

3957 (b) The address of the place of business described in Subsection (1)(a) shall appear
 3958 upon:

3959 (i) the application for a bail bond surety company license; and
 3960 (ii) ~~the~~ a bail bond surety company license issued under this chapter.

3961 (c) In addition to complying with Subsection (1)(b), a bail bond surety company shall
 3962 register and maintain with the commissioner the following at which the commissioner may
 3963 contact the bail surety company:

3964 (i) a telephone number; and
 3965 (ii) a business email address.

3966 ~~[(c)]~~ (d) A bail bond surety company shall notify the commissioner ~~[of any change in~~
 3967 ~~the address required by this Subsection (1) within 20 days after the change.]~~ within 20 days of a
 3968 change in the bail bond surety company's:

3969 (i) place of business address;

3970 (ii) telephone number; or

3971 (iii) business email address.

3972 ~~[(d)]~~ (e) This section does not prohibit a bail bond surety company from maintaining
3973 the place of business required under this section in the licensee's residence, if the residence is
3974 in Utah.

3975 (2) The bail bond surety company shall keep at the place of business described in
3976 Subsection (1)(a) the records required under Section 31A-35-604.

3977 Section 44. Section **31A-37-103** is amended to read:

3978 **31A-37-103. Chapter exclusivity.**

3979 (1) Except as provided in ~~[Subsection]~~ Subsections (2) and (3) or otherwise provided
3980 in this chapter, a provision of this title other than this chapter does not apply to a captive
3981 insurance company.

3982 (2) To the extent that a provision of the following does not contradict this chapter, the
3983 provision applies to a captive insurance company that receives a certificate of authority under
3984 this chapter:

3985 (a) Chapter 2, Administration of the Insurance Laws;

3986 (b) Chapter 4, Insurers in General;

3987 (c) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

3988 (d) Chapter 14, Foreign Insurers;

3989 (e) Chapter 16, Insurance Holding Companies;

3990 (f) Chapter 17, Determination of Financial Condition;

3991 (g) Chapter 18, Investments;

3992 (h) Chapter 19a, Utah Rate Regulation Act;

3993 (i) Chapter 27, Delinquency Administrative Action Provisions; and

3994 (j) Chapter 27a, Insurer Receivership Act.

3995 ~~[(2)]~~ (3) In addition to this chapter, and subject to Section 31A-37a-103:

3996 (a) Chapter 37a, Special Purpose Financial Captive Insurance Company Act, applies to
3997 a special purpose financial captive insurance company; and

3998 (b) for purposes of a special purpose financial captive insurance company, a reference
3999 in this chapter to "this chapter" includes a reference to Chapter 37a.

4000 Section 45. Section **31A-37-202** is amended to read:

4001 **31A-37-202. Permissive areas of insurance.**

4002 (1) (a) Except as provided in Subsection (1)(b), when permitted by its articles of
4003 incorporation or charter, a captive insurance company may apply to the commissioner for a
4004 certificate of authority to do all insurance authorized by this title except workers' compensation
4005 insurance.

4006 (b) Notwithstanding Subsection (1)(a):

4007 (i) a pure captive insurance company may not insure a risk other than a risk of:

4008 (A) its parent or affiliate;

4009 (B) a controlled unaffiliated business; or

4010 (C) a combination of Subsections (1)(b)(i)(A) and (B);

4011 (ii) an association captive insurance company may not insure a risk other than a risk of:

4012 (A) an affiliate;

4013 (B) a member organization of its association; and

4014 (C) an affiliate of a member organization of its association;

4015 (iii) an industrial insured captive insurance company may not insure a risk other than a
4016 risk of:

4017 (A) an industrial insured that is part of the industrial insured group;

4018 (B) an affiliate of an industrial insured that is part of the industrial insured group; and

4019 (C) a controlled unaffiliated business of:

4020 (I) an industrial insured that is part of the industrial insured group; or

4021 (II) an affiliate of an industrial insured that is part of the industrial insured group;

4022 (iv) a special purpose captive insurance company may only insure a risk of its parent;

4023 (v) a captive insurance company may not provide:

4024 (A) personal motor vehicle insurance coverage;

4025 (B) homeowner's insurance coverage; or

4026 (C) a component of a coverage described in this Subsection (1)(b)(v); and

4027 (vi) a captive insurance company may not accept or cede reinsurance except as
4028 provided in Section 31A-37-303.

4029 (c) Notwithstanding Subsection (1)(b)(iv), for a risk approved by the commissioner a
4030 special purpose captive insurance company may provide:

- 4031 (i) insurance;
- 4032 (ii) reinsurance; or
- 4033 (iii) both insurance and reinsurance.
- 4034 (2) To conduct insurance business in this state a captive insurance company shall:
- 4035 (a) obtain from the commissioner a certificate of authority authorizing it to conduct
- 4036 insurance business in this state;
- 4037 (b) hold at least once each year in this state:
- 4038 (i) a board of directors meeting; or
- 4039 (ii) in the case of a reciprocal insurer, a subscriber's advisory committee meeting;
- 4040 (c) maintain in this state:
- 4041 (i) the principal place of business of the captive insurance company; or
- 4042 (ii) in the case of a branch captive insurance company, the principal place of business
- 4043 for the branch operations of the branch captive insurance company; and
- 4044 (d) except as provided in Subsection (3), appoint a resident registered agent to accept
- 4045 service of process and to otherwise act on behalf of the captive insurance company in this state.
- 4046 (3) Notwithstanding Subsection (2)(d), in the case of a captive insurance company
- 4047 formed as a corporation or a reciprocal insurer, if the registered agent cannot with reasonable
- 4048 diligence be found at the registered office of the captive insurance company, the commissioner
- 4049 is the agent of the captive insurance company upon whom process, notice, or demand may be
- 4050 served.
- 4051 (4) (a) Before receiving a certificate of authority, a captive insurance company:
- 4052 (i) formed as a corporation shall file with the commissioner:
- 4053 (A) a certified copy of:
- 4054 (I) articles of incorporation or the charter of the corporation; and
- 4055 (II) bylaws of the corporation;
- 4056 (B) a statement under oath of the president and secretary of the corporation showing
- 4057 the financial condition of the corporation; and
- 4058 (C) any other statement or document required by the commissioner under Section
- 4059 31A-37-106;
- 4060 (ii) formed as a reciprocal shall:
- 4061 (A) file with the commissioner:

4062 (I) a certified copy of the power of attorney of the attorney-in-fact of the reciprocal;
4063 (II) a certified copy of the subscribers' agreement of the reciprocal;
4064 (III) a statement under oath of the attorney-in-fact of the reciprocal showing the
4065 financial condition of the reciprocal; and

4066 (IV) any other statement or document required by the commissioner under Section
4067 31A-37-106; and

4068 (B) submit to the commissioner for approval a description of the:

4069 (I) coverages;

4070 (II) deductibles;

4071 (III) coverage limits;

4072 (IV) rates; and

4073 (V) any other information the commissioner requires under Section 31A-37-106.

4074 (b) (i) If there is a subsequent material change in an item in the description required
4075 under Subsection (4)(a)(ii)(B) for a reciprocal captive insurance company, the reciprocal
4076 captive insurance company shall submit to the commissioner for approval an appropriate
4077 revision to the description required under Subsection (4)(a)(ii)(B).

4078 (ii) A reciprocal captive insurance company that is required to submit a revision under
4079 Subsection (4)(b)(i) may not offer any additional types of insurance until the commissioner
4080 approves a revision of the description.

4081 (iii) A reciprocal captive insurance company shall inform the commissioner of a
4082 material change in a rate within 30 days of the adoption of the change.

4083 (c) In addition to the information required by Subsection (4)(a), an applicant captive
4084 insurance company shall file with the commissioner evidence of:

4085 (i) the amount and liquidity of the assets of the applicant captive insurance company
4086 relative to the risks to be assumed by the applicant captive insurance company;

4087 (ii) the adequacy of the expertise, experience, and character of the person who will
4088 manage the applicant captive insurance company;

4089 (iii) the overall soundness of the plan of operation of the applicant captive insurance
4090 company;

4091 (iv) the adequacy of the loss prevention programs for the following of the applicant
4092 captive insurance company:

4093 (A) a parent;
4094 (B) a member organization; or
4095 (C) an industrial insured; and
4096 (v) any other factor the commissioner:
4097 (A) adopts by rule under Section 31A-37-106; and
4098 (B) considers relevant in ascertaining whether the applicant captive insurance company
4099 will be able to meet the policy obligations of the applicant captive insurance company.
4100 (d) In addition to the information required by Subsections (4)(a), (b), and (c), an
4101 applicant sponsored captive insurance company shall file with the commissioner:
4102 (i) a business plan at the level of detail required by the commissioner under Section
4103 31A-37-106 demonstrating:
4104 (A) the manner in which the applicant sponsored captive insurance company will
4105 account for the losses and expenses of each protected cell; and
4106 (B) the manner in which the applicant sponsored captive insurance company will report
4107 to the commissioner the financial history, including losses and expenses, of each protected cell;
4108 (ii) a statement acknowledging that the applicant sponsored captive insurance company
4109 will make all financial records of the applicant sponsored captive insurance company,
4110 including records pertaining to a protected cell, available for inspection or examination by the
4111 commissioner;
4112 (iii) a contract or sample contract between the applicant sponsored captive insurance
4113 company and a participant; and
4114 (iv) evidence that expenses will be allocated to each protected cell in an equitable
4115 manner.
4116 (5) (a) Information submitted pursuant to Subsection (4) is classified as a protected
4117 record under Title 63G, Chapter 2, Government Records Access and Management Act.
4118 (b) Notwithstanding Title 63G, Chapter 2, Government Records Access and
4119 Management Act, the commissioner may disclose information submitted pursuant to
4120 Subsection (4) to a public official having jurisdiction over the regulation of insurance in
4121 another state if:
4122 (i) the public official receiving the information agrees in writing to maintain the
4123 confidentiality of the information; and

4124 (ii) the laws of the state in which the public official serves require the information to be
4125 confidential.

4126 (c) This Subsection (5) does not apply to information provided by an industrial insured
4127 captive insurance company insuring the risks of an industrial insured group.

4128 (6) (a) A captive insurance company shall pay to the department the following
4129 nonrefundable fees established by the department under Sections 31A-3-103, 31A-3-304, and
4130 63J-1-504:

4131 (i) a fee for examining, investigating, and processing, by a department employee, of an
4132 application for a certificate of authority made by a captive insurance company;

4133 (ii) a fee for obtaining a certificate of authority for the year the captive insurance
4134 company is issued a certificate of authority by the department; and

4135 (iii) a certificate of authority renewal fee.

4136 (b) The commissioner may:

4137 (i) assign a department employee or retain legal, financial, and examination services
4138 from outside the department to perform the services described in:

4139 (A) Subsection (6)(a); and

4140 (B) Section 31A-37-502; and

4141 (ii) charge the reasonable cost of services described in Subsection (6)(b)(i) to the
4142 applicant captive insurance company.

4143 (7) If the commissioner is satisfied that the documents and statements filed by the
4144 applicant captive insurance company comply with this chapter, the commissioner may grant a
4145 certificate of authority authorizing the company to do insurance business in this state.

4146 (8) A certificate of authority granted under this section expires annually and must be
4147 renewed by July 1 of each year.

4148 Section 46. Section **31A-37-504** is amended to read:

4149 **31A-37-504. Examinations for branch and alien captive insurance companies.**

4150 [~~(1) This section applies to all business written by a captive insurance company.~~]

4151 [~~(2) Notwithstanding this section, the~~]

4152 (1) The examination for a branch captive insurance company shall be of branch
4153 business and branch operations only, if the branch captive insurance company:

4154 (a) provides annually to the commissioner a certificate of compliance, or an equivalent,

issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed; and

(b) demonstrates to the commissioner's satisfaction that the branch captive insurance company is operating in sound financial condition in accordance with ~~all~~ the applicable laws and regulations of the jurisdiction in which the branch captive insurance company is formed.

~~(3)~~ (2) As a condition of obtaining a certificate of authority, an alien captive insurance company shall grant authority to the commissioner to examine the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed.

~~(4) To the extent that the provisions of Chapters 2, 4, 5, 14, 16, 17, 18, 19a, 27, and 27a do not contradict this section, these chapters apply to captive insurance companies that have received a certificate of authority under this chapter.]~~

Section 47. Section **31A-40-308** is enacted to read:

31A-40-308. Material changes.

A professional employer organization shall notify the commissioner within 30 days of a change in:

(1) ownership;

(2) an address or telephone number; or

(3) a contact person.

Section 48. Section **59-9-105** is amended to read:

59-9-105. Tax on certain insurers to pay for relative value study and other publications or services.

(1) ~~Each~~ An insurer ~~[providing]~~ that provides coverage for motor vehicle liability, uninsured motorist, and personal injury protection shall pay to the State Tax Commission on or before March 31 of each year, a tax of .01% on the total premiums received for these coverages during the preceding calendar year from policies covering motor vehicle risks in this state.

(2) The taxable premium under this section shall be reduced by ~~all~~ the premiums returned or credited to policyholders on direct business subject to tax in this state.

(3) ~~[All money]~~ Money received by the state under this section shall be deposited ~~[in the General Fund as a dedicated credit for the purpose of providing funds]~~ into the Relative Value Study Restricted Account created in Subsection (4).

(4) (a) There is created in the General Fund a restricted account known as the "Relative Value Study Restricted Account."

(b) The Relative Value Study Restricted Account shall consist of the money received by the insurance commissioner under:

(i) Section 31A-2-208; and

(ii) this section.

(c) The insurance commissioner shall administer the Relative Value Study Restricted Account. Subject to appropriations by the Legislature, the insurance commissioner shall use the money deposited into the Relative Value Study Restricted Account to pay for [any] costs and expenses incurred by the [Insurance Department] insurance commissioner:

~~[(a)]~~ (i) in conducting, maintaining, and administering the relative value study referred to in Section 31A-22-307;

~~[(b)]~~ (ii) to prepare, publish, and distribute publications relating to insurance and consumers of insurance as provided in Section 31A-2-208; and

~~[(c)]~~ (iii) in providing the services of the [Insurance Department] insurance commissioner through the use of:

~~[(i)]~~ (A) electronic commerce; and

~~[(ii)]~~ (B) other information technology.

Section 49. Section **63I-2-231** is amended to read:

63I-2-231. Repeal dates, Title 31A.

~~[(1)]~~ Section 31A-23a-415 is repealed July 1, 2011.

~~[(2)]~~ Title 31A, Chapter 42, Defined Contribution Risk Adjuster Act, is repealed January 1, 2013.

Section 50. Section **63J-1-602.2** is amended to read:

63J-1-602.2. List of nonlapsing funds and accounts -- Title 31 through Title 45.

(1) Appropriations from the Technology Development Restricted Account created in Section 31A-3-104.

(2) Appropriations from the Criminal Background Check Restricted Account created in Section 31A-3-105.

(3) Appropriations from the Captive Insurance Restricted Account created in Section 31A-3-304, except to the extent that Section 31A-3-304 makes the money received under that

4217 section free revenue.

4218 (4) Appropriations from the Title Licensee Enforcement Restricted Account created in
4219 Section 31A-23a-415.

4220 (5) Appropriations from the Insurance Fraud Investigation Restricted Account created
4221 in Section 31A-31-108.

4222 [~~(5)~~] (6) The fund for operating the state's Federal Health Care Tax Credit Program, as
4223 provided in Section 31A-38-104.

4224 [~~(6)~~] (7) The Special Administrative Expense Account created in Section 35A-4-506.

4225 [~~(7)~~] (8) Funding for a new program or agency that is designated as nonlapsing under
4226 Section 36-24-101.

4227 [~~(8)~~] (9) The Oil and Gas Conservation Account created in Section 40-6-14.5.

4228 [~~(9)~~] (10) The Off-Highway Access and Education Restricted Account created in
4229 Section 41-22-19.5.

4230 Section 51. Section **63J-1-602.3** is amended to read:

4231 **63J-1-602.3. List of nonlapsing funds and accounts -- Title 46 through Title 60.**

4232 (1) Certain funds associated with the Law Enforcement Operations Account, as
4233 provided in Section 51-9-411.

4234 (2) The Public Safety Honoring Heroes Restricted Account created in Section
4235 53-1-118.

4236 (3) Funding for the Search and Rescue Financial Assistance Program, as provided in
4237 Section 53-2-107.

4238 (4) Appropriations made to the Department of Public Safety from the Department of
4239 Public Safety Restricted Account, as provided in Section 53-3-106.

4240 (5) Appropriations to the Motorcycle Rider Education Program, as provided in Section
4241 53-3-905.

4242 (6) The DNA Specimen Restricted Account created in Section 53-10-407.

4243 (7) Appropriations to the State Board of Education, as provided in Section
4244 53A-17a-105.

4245 (8) Certain funds appropriated from the Uniform School Fund to the State Board of
4246 Education for new teacher bonus and performance-based compensation plans, as provided in
4247 Section 53A-17a-148.

4248 (9) Certain funds appropriated from the Uniform School Fund to the State Board of
 4249 Education for implementation of proposals to improve mathematics achievement test scores, as
 4250 provided in Section 53A-17a-152.

4251 (10) The School Building Revolving Account created in Section 53A-21-401.

4252 (11) Money received by the State Office of Rehabilitation for the sale of certain
 4253 products or services, as provided in Section 53A-24-105.

4254 (12) The State Board of Regents, as provided in Section 53B-6-104.

4255 (13) Certain funds appropriated from the General Fund to the State Board of Regents
 4256 for teacher preparation programs, as provided in Section 53B-6-104.

4257 (14) A certain portion of money collected for administrative costs under the School
 4258 Institutional Trust Lands Management Act, as provided under Section 53C-3-202.

4259 (15) Certain surcharges on residence and business telecommunications access lines
 4260 imposed by the Public Service Commission, as provided in Section 54-8b-10.

4261 (16) Certain fines collected by the Division of Occupational and Professional Licensing
 4262 for violation of unlawful or unprofessional conduct that are used for education and enforcement
 4263 purposes, as provided in Section 58-17b-505.

4264 (17) The Nurse Education and Enforcement Account created in Section 58-31b-103.

4265 (18) The Certified Nurse Midwife Education and Enforcement Account created in
 4266 Section 58-44a-103.

4267 (19) Certain fines collected by the Division of Occupational and Professional Licensing
 4268 for use in education and enforcement of the Security Personnel Licensing Act, as provided in
 4269 Section 58-63-103.

4270 (20) The Professional Geologist Education and Enforcement Account created in
 4271 Section 58-76-103.

4272 (21) Appropriations from the Relative Value Study Restricted Account created in
 4273 Section 59-9-105.

4274 ~~[(21)]~~ (22) Certain money in the Water Resources Conservation and Development
 4275 Fund, as provided in Section 59-12-103.

4276 Section 52. **Intent language regarding lapsing of money.**

4277 It is the intent of the Legislature that money received by the Insurance Department
 4278 during fiscal year 2010-2011 under the following shall be considered dedicated credits and in

4279 closing out fiscal year 2010-2011 the unspent dedicated credits shall lapse to the appropriate
4280 restricted account created by the amendments made by this bill:

- 4281 (1) Section 31A-2-208;
4282 (2) Section 31A-31-108;
4283 (3) Section 31A-31-109; and
4284 (4) Section 59-9-105.

4285 Section 53. **Effective date.**

4286 This bill takes effect on May 11, 2011, except that the amendments to Section
4287 31A-3-304 in this bill take effect on July 1, 2013.

4288 Section 54. **Retrospective operation.**

4289 The amendments to the following sections in this bill have retrospective operation to
4290 January 1, 2011:

- 4291 (1) Section 31A-22-701;
4292 (2) Section 31A-30-103;
4293 (3) Section 31A-30-106.

